

Queries and Answer in respect of VAT on Builders

Sr. No.	Query	Answers
1.	If a customer has paid full (100%) advance before 1.4.2010, but construction is not fully completed. Is VAT payable? If so, on what amount?	<p>(i) Tax applicability would depend on the date of registration of agreement i.e. if the date of registration of agreement is on or after 1st April, 2010, VAT.</p> <p>(ii) The tax @1%. Terms of payment is not relevant for applicability of tax.</p> <p>(iii) VAT will be applicable @ 1% of the aggregate amount specified in the agreement or value specified for the purpose of Stamp Duty in respect of said agreement whichever is higher, if the said agreement is registered on or after 1st April, 2010.</p>
2.	For construction partly completed upto 1.4.2010, is VAT applicable on the entire amount? Or is VAT payable only on balance received on or after 1 st April, 2010.	As (i) above
3.	If customer has paid advance prior to 1.4.2010 against booking of flat/premises even though no work has started, is VAT payable?	As (i) above
4.	If a customer pays advance on or before 1.4.2010 for booking of flat/premises and no work has yet started. Is VAT payable?	As (i) above
5.	On cancellation of booking - Do we refund the value added tax to the customer	The issue is being examined.

	and get credit from the VAT authorities? If so, how do we claim/adjust such refund of value added tax? Or has the customer have to forfeit the value added tax amount?	
6.	Is VAT payable for Flats/Premises given free of cost to the landowner/any other interested parties?	The tax is payable on the value fixed for the payment of stamp duty.
7.	As per M.F. (D.R.) Order No.1/2010 dated 22.6.2010, with regard to Service Tax, Architects, Chartered Engineers and Licensed Surveyors have been authorized to issue completion certificate. Please clarify further in this regard.	Where ever there is Municipal authority or Corporation, such authority shall issue completion certificate. For other places issue is being examined.
8.	MCHI has filed appeal in court and has obtained a stay order against the applicability and chargeability of VAT.	
9.	Whether VAT is 1% of 75% of the amount or 1% of the agreement amount	1% tax is applicable as a composition rate, hence the dealer may opt for 1% VAT under composition scheme on the entire agreement amount or the value specified for the purpose of stamp duty.
10.	It is not clear on which amount the rate of VAT is chargeable - the agreement amount or the market value as per the ready reckoner.	VAT is chargeable on the amount of agreement value or the market value for the purpose of stamp duty, whichever is higher.

11.	a) Time for collection of VAT whether initially or alongwith the installments slabwise payment or during the last payment from?	The claimant dealer shall make e-payment of the amount of composition for the return period in which the agreement is registered. As per the periodicity fixed for filling VAT returns, please see Rule 17(4) of MVAT Rules.
	b) At what intervals is the amount directed to be remitted to the Government Treasury.	
12.	VAT is applicable to builders or not? When it should be collected?	VAT is applicable to builders. VAT may be collected at the time of registration of agreement.
13.	When return should be submitted every month or quarterly basis. Due date of payment?	As per periodicity of returns under of MVAT rules.
14.	What will be the interest and penalty?	Interest will be applicable @ 1.25% u/s. 30(2) of MVAT Act and Rs.5000/- penalty for failure to file return within prescribed time under section 29(8) of MVAT Act and other penalties or interest as per provisions of law.
15.	As a general practice developers raise demand letters for collecting the payment from the customers as per the payment schedule, no invoices are issued as such. So when does the VAT & Service Tax become chargeable, at the time of raising demand letters or at the time of giving possession to the customers when the entire cost of flat is recovered.	The tax is payable on registration of agreement. Hence the tax may be collected accordingly and remitted to the Government Treasury.

16.	Will the money collected at the time of possession as advance society maintenance charges and society deposit to be taxed under VAT & Service Tax.	No. The value fixed for the purpose of stamp duty on said value 1% tax is leviable.
17.	Is set-off available for input credit of VAT.	No set off available as input of VAT.
18.	What is the status of charging VAT on flats booked before 1 st April 2010.	Tax liability would depend on the date of registration of agreement. If the agreement is registered on 1 st April 2010 or thereafter, the builder may opt for @1% VAT scheme.
19.	There is no clarity regarding the rate and amount of Service Tax or VAT - Whether service tax is 10.3% of 25% of the amount and whether VAT is 1% of 75% of the amount or 1% of the agreement amount.	If the dealer opts for composition scheme u/s. 42(3A) he has to pay 1% of entire agreement value or value for purpose of Stamp duty whichever is higher.
20.	It is not clear on which amount the rate of service tax or VAT is chargeable - the agreement amount or the market value as per the ready reckoner.	As stated above
21.	Time for collection of the tax - Whether initially or alongwith the installments slabwise payment of during the last payment from the purchaser. This is important as the collected amount has to be remitted immediately at regular intervals.	As per scheme VAT is payable as soon as agreement is registered and has to be paid along with the return for that period. He may accordingly collect VAT.

22.	At what intervals is the amount collected to be remitted to the government treasury.	As stated above.
23.	We have taken S.R.A. Project as a developer we are required to give temporary agreement to reside without any consideration, what will impact of such alternative arrangement on tax working?	Where there is no consideration composition is not available.
24.	In case of VAT whether it is payable as per date of agreement and what if the part of the sales proceeds received before April 2010. In the event only possession is pending shall we have to considered the VAT or not.	If the date of registration of agreement is before 1 st April 2010, the builder cannot opt for the composition scheme of 1%.
25.	Our one project is completed in all respect and we have received the occupation certificate on 19.01.2010. Kindly let us know if VAT is applicable to us or only for under construction projects.	If the completion certificate is not issued and there is sale agreement then the VAT is leviable on the agreement value fixed for payment of stamp duty.
26.	In one of our project one flat is unsold though complete in all respects and occupation certificate is not yet received. In this case VAT is applicable.	VAT will be applicable.