

Office of the
Commissioner of Sales Tax,
Vikrikar Bhavan, 8th floor,
Room No.831, Mazgoan,
MUMBAI-400010

TRADE CIRCULAR

To,

No. Build-Devep/Adm.Relief.06-10/Adm-8
(Trade Cir. 14 T of 2012)

Mumbai, Date: 06-08-2012

SUB: Grant of Registration and Administrative Relief to Developers.

Sir/Madam/Gentleman,

BACKGROUND:

1. The Hon. Bombay High court has delivered judgement in case of Maharashtra Chamber of Housing Industry (MCHI) vs. State of Maharashtra in respect of the writ petition no. 2022 of 2007. The constitutional validity of the amendment to section 2(24) of the Maharashtra value added tax Act, 2002, Notification dated 9-7-2010 notifying a composition scheme for Builders, Developers was upheld. The Promoters and Builders Association has filed special leave petition No. 17738 and 17709 of 2012 before the Hon' Supreme Court of India. Hon' Apex Court admitted the petition but no stay is granted to the judgement of Hon Bombay High Court.

As a result, the developers are liable to pay tax under Maharashtra Value Added Tax Act, 2002 with effect from 20th June, 2006.

2. Considering the above position, it is expected that large number of developers will come forward to obtain the registration under Maharashtra Value Added Tax Act, 2002. In order to facilitate obtaining registration, grant of administrative relief for unregistered period, and filing of return for period starting from

20/06/2006 for these dealers, following measures are being taken by the Sales Tax Department.

- a) At every division, a dedicated officer of registration branch will be assigned with the job of granting registration to developers. Display board of such facility will be placed at the conspicuous location in office premises.
- b) No pre-registration visit will be conducted to the place of business of developers.
- c) At present, after uploading of registration application, the system generated appointment date is communicated to the dealer. However in case of developers, a dedicated registration officer will attend to such dealers on next day of uploading the registration application, irrespective of the appointment date given by system.
- d) Registration number should be granted to such dealers on the same date on priority, subject to the developers submitting the necessary documents.
- e) As per the earlier Circular instructions, if there is a delay in obtaining certificate of registration beyond a period 5 years, then this delay is treated as an attempt to evade the tax and such dealers are not considered for grant of administrative relief. However for developers, the delay beyond a period of 5 years in obtaining registration will not be treated as an attempt to evade tax and these dealers will be granted administrative relief if they apply for registration before 16/08/2012.
- f) If the developer applies for registration on or before 16/08/2012 and applies for administrative relief on or before 31/08/2012 alongwith proof of filing of returns and payment of tax for unregistered period, then the compounding fee for all unregistered period shall be levied at Rs. 5000 only.

However, if any developer fails to apply for registration and administrative relief before above-mentioned date then the compounding fee will be levied as per office order No. IMC10.07/Adm Relief/URD/Adm-4/B-1020 Mumbai Dated 18 April, 2007, which will be as below:-

“For dealers who have not obtained Registration Certificate immediately after they became liable for registration but obtain a Registration Certificate under the MVAT Act after remaining unregistered for some time.

The compounding fee should not desirably less than, Rs. 5000 plus 0.5% of the gross sales tax liability, arising during unregistered period, for each month of delay in obtaining the Registration under the relevant Act.”

- g) Once the developer submits his application for administrative relief along with compounding fee and pays taxes with returns for unregistered period, the concerned Joint Commissioner shall pass the order granting administrative relief within two days. There will be no need to give hearing to the dealer.
- h) Considering the expected workload, more Joint Commissioners are entrusted with the powers of grant of administrative relief in Mumbai and Pune.
- i) The registration officer while granting the registration to these dealers should set the periodicity of their returns as quarterly.
- j) Being a works contractor, the dealers should file their returns in form no. 233.
- k) Needless to mention that the developers should upload all their returns along with tax, interest and late fee.
- l) The developers who have still not obtained registration shall obtain registration on or before 16th August, 2012. In such cases penalty under sub-section (2A) of section 29 of MVAT Act will not be attracted.
- m) Those developers who had obtained registration and paid taxes for period after 01-04-2010 should apply for administrative relief for previous period and file returns for previous periods on or before 31st August, 2012.
- n) The department will initiate penal actions against developers who will not obtained registration and file the returns within above time.
- o) If the Audit Report u/s 61 in Form No. 704 for all the periods up to 2011-12 are filed on or before 30th November, 2012, then the penalty u/s 61 (2) will not be levied.

3. To facilitate these dealers and to resolve their queries, dedicated help desks have been opened at following offices of the Sales Tax Department, viz, Mumbai,

Thane, Pune, Kolhapur, Nasik, Nagpur and Aurangabad. The name of the help desk officers and their telephone numbers are given below.

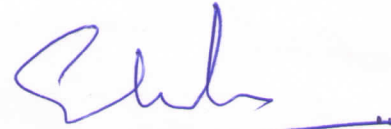
LOCATION	NAME	CONTACT NUMBERS	e-MAIL
1) Mumbai	Shri S. K. NIKAM	23760565	nikam.sk@mahavat.gov.in
2) Mumbai	Shri D. S. SHINDE	23760562	shinde.ds@mahavat.gov.in
2) Thane	Shri Y. A. LOKARE	25496231 9892824521	lokare.ya@mahavat.gov.in
3) Pune	Shri R. G. BANKHELE	26609218 9822006188	bankhele.rg@gmail.com
4) Kolhapur	Shrimati S. V. MISKIN	2663932 / 42	miskin.sv@mahavat.gov.in
5) Nasik	Shrimati S. D. THORAT	2335173 9421689354	thorat.sd@mahavat.gov.in
6) Nagpur	Shri S. V. LAHANE	9823999375	lahane.sv@mahavat.gov.in
7) Aurangabad	Shri R. V. DARKE	9850298652	darake.rv@gmail.com

4. A Frequently Asked Questions [FAQs] regarding the tax liability and other issues raised by MCHI is annexed with this trade circular.

5. In case of difficulties, the dealers are requested to approach the concerned Joint Commissioner of Sales Tax.

6. This circular cannot be made use of for legal interpretation of provisions of law, as it is clarificatory in nature. If any member of the trade has any doubt, he may refer the matter to this office for further clarification.

You are requested to bring the contents of this circular to the notice of all the members of your association.



(Sanjay Bhatia)
Commissioner of Sales Tax
Maharashtra State, Mumbai.

No. . Build-Devep/Adm.Relief.06-10/Adm-8/B-401 Mumbai, dated 06.08.2012
Trade Circular No. 14 T of 2012

1. Copy forwarded To :
 - a. The Joint Commissioner of Sales Tax (MAHAVIKAS) with the request to upload this Trade Circular on the Departments web-site.
2. Copy forwarded with compliments for information to:
 - a. The Deputy Secretary, Finance Department, Mantralaya, Mumbai.
 - b. The Under Secretary, Finance Department, Mantralaya, Mumbai.
 - c. The Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.



(VIVEK BHIMANWAR)

Joint Commissioner of Sales Tax (HQ) 1,
Maharashtra State, Mumbai.

FREQUENTLY ASKED QUESTIONS [FAQs] ON **TAXATION OF DEVELOPERS**

1. Admitting while not accepting that the State of Maharashtra can levy tax on such a transaction, will our members get the credit of input tax paid while effecting purchases of materials like cement, iron & steel etc. required to be used in the Construction project. The members would pay the tax under the MVAT Act as the applicable rate of 4% or 12.5% depending on the material required to be used?

Ans: Yes, they will get input tax credit, if they paid the taxes u/r 58 or u/s 42 (3).

2. In our life of industry, the practice is that an Agreement to Sell is prepared much in advance at the time when a prospective buyer book the accommodation in a building under construction and the developer concerned undertake to give possession of the accommodation so booked after obtaining completion certificate with the promised Position, we would like to know as to at what point of time the VAT under the amended law would be payable?

Ans: Taxability arises on agreement. Tax is levied as and when the installments become due and payable or are received, whichever is earlier.

3. Whether the levy of VAT on agreement for under construction flats/shops etc. is covered with in the amended definition of Works Contract? Is there any scope for escaping this levy?

Ans: Yes. It is covered. No Scope for escapement.

4. What is the rate of tax under VAT Act applicable for agreement to sell under construction flats?

Ans: Tax rates would be those which apply to the goods in which property is transferred.

5. What is the effective date from which the VAT will be applicable? -

Ans: The date of amendment i.e. 20 June, 2006.

6. The agreement to sell the flat was executed before 20.06.2006 and the building was under construction and possession is given after 20.06.2006. Whether the VAT will apply in Such case because the agreements were executed prior to 20.06.2006? If yes how the sale value will be determined for calculation of VAT? Whether the amount received prior to 20.06.2006 will be exempt from VAT? .

Ans: Yes. VAT will apply. It will be levied on value received or receivable after 20th June, 2006.

7. Many times mere advances are received and agreement is executed much later. What will be the point of liability whether at the time of receiving the advances or at the time of execution of the agreement or thereafter on possession?

Ans: Tax will be levied from the date of the agreement. The amount of advance, as and when it is adjusted towards the agreement amount, will be taxed.

8. The builders receive non-refundable deposits and other charges under the agreement such as electricity deposit, water charges, legal charges, development charges etc. Whether such receipts will also form part of sale price for VAT?

Ans: The amounts which are received as deposits will be a deduction to the extent such amounts are actually paid to other authorities.

9. In the under construction flats the amounts are received in installments. How the sale price will be determined? Whether the actual receipts will be taken as sales or the whole of the agreement value will be taken as sale at the time of execution of the agreement, even though the amount is yet to be received?

Ans: Received or receivable. Receivable means due and payable.

10. Can the VAT applicable in above cases be collected by raising a debit note or the same should be mentioned in the agreement itself? Whether VAT should be collected on each installment or at one go upon execution of the agreement?

Ans: Yes. It can be collected by raising a debit note. Specific mention in the agreement is a choice of the contracting parties. It should be collected as and when the instalment becomes due.

11. What will be the amount of set off available in such cases i.e. full set off of VAT paid on purchases or part of that?

Ans: Purchases made on or after 20th June, 2006, will be eligible for set off subject to rules.

12. Whether any interest or penalty will be attracted for non registration with sales tax authorities under VAT and no submission of VAT returns for the transactions executed for sale of flats/ shops under construction between intervening period i.e. 20.06.2006 to 07.02.2007?

Ans: Yes.

13. What will be VAT the implications where mere advances are received from buyers and agreement for sale is not executed with the buyer?

Ans: There is no tax liability.

14. If composition scheme is not opted then what is the rate of tax and how the sales price will be determined? What are the deductions permissible like labour charges, profit margin etc. In such cases how the set off will be worked out?

Ans: As per rule 58. Set off is related to purchases and not sales.

15. A Builder may construct more than one project, in such case, whether different calculation method for different project can be applied?

Ans: Yes, he may adopt different method for each project, but he is not allowed to change the method till the completion of that project.

16. What are the various options available to the developers for disclosing tax liability?

Ans: Developers can discharge their tax liability by any of the following option:-

From 20.06.2006 to 31.03.2010

- 1. Composition Scheme U/s 42 (3)-** Under this scheme developer has to pay 5% tax on the agreement value. Land deduction is not available. Input tax credit is available subject to the reduction of 4 per cent.
- 2. Actual Expense Method U/r 58-** Under rule 58, the deduction of Labour & service charges is available on actual basis. Land deduction is also available. Set-off will be calculated subject to the condition u/r 53 and 54.
- 3. Standard Deduction Method U/r 58-** Under rule 58, the deduction of land cost will be allowed. Thereafter 30% standard deduction from remaining amount will be available as per proviso to sub-rule 1. Set-off will be calculated subject to the condition u/r 53 and 54.

After 01.04.2010

The developers can opt for fourth option also, under this option u/s 42 (3A), developer has to pay 1% tax on agreement value. No land deduction and input tax credit is available.

Needless to mention that, the developers will be required to make the payment of interest according to the provisions of law.