Private and Confidential and strictly for members of MCHI- CREDAI
Guidance Note and Advisory issued by MCHI-CREDAI on VAT issues.

FREQUENTLY ASKED QUESTIONS AND REPLIES

	Question	Reply
1	Which method should we recommend to our Members for calculation of VAT liability for the period from 20th June 2006 to 31st March 2010?	Please refer to the Advisory dated 1st October 2012 issued by MCHI. Members is advised to adopt any one of the method for each of the project as may be found suitable and as advised by the Legal Consultant of the Member.
2	What are the other issues involved in the method of calculation of the VAT liability w.r.t the following OMS purchases Imports Materials not used in the same form Purchases from URD Work done by URD contractors Exempted Purchases	Depending upon the method adopted by the Developer, the VAT liability in respect of each of the aforesaid items is to be applied. When following cost of all purchases plus profit thereon, the deductions for the aforesaid items shall be available as per the normal VAT rules. In the event of the work done by the URD contractors, the liability to pay the VAT is on the principle Developer.
3	What documents to be relied upon to prove the completion of construction so as not to charge VAT on flats sold after completion?	Though Occupation Certificate can be termed as sure proof of having completed the construction, Developer can rely upon Architects Certificate or can use even date of application for Occupation certificate as an evidence of completing the construction for purpose of VAT. However, the Dept has taken a view that the completion of construction will be determined from the books of accounts of the Dealer.
4	Whether work done/stage completed before the Agreement will be taxable to VAT?	The liability of the payment of the VAT is on the "Goods" being incorporated in the works contract. If on the date of

		Agreement, part of the building is completed, then Goods already incorporated in the immovable property cannot be subjected to VAT with respect to the contract entered with that customer. However, though this should be the legal interpretation and in view that the liability of VAT is collectible from the customer, it is better that VAT is collected and paid till building is completed from the customer.
5	Is VAT applicable in case of Redevelopment and SRA project For the rehab customers For free sale area Customers	Any area given free of cost to slum dwellers or tenants, there is no value of goods transferred to the occupiers of the new premises. The premises being given free of cost is under a statute and not as an arrangement between two parties and hence no fair market value can also be affixed to such flats for arriving at VAT. Also amount spent on the Rehab of Tenant area, are in form of FSI cost (land cost) for the Developer. Hence no VAT is payable. In case of free area to flat purchaser, the liability is calculated either on the basis of sale price of flat with prescribed deductions or on purchase value of goods, and hence this is an academic issue.
6	In case, the customer has paid entire or substantial amount of the Agreement Value upfront before 20th June 2006, whether VAT will be liable to be paid on the amounts due after 20th June 2006 but paid	VAT will apply to the value due after 20th June 2006. In the event of Dealer opting to pay the VAT on the basis of purchase of material, then all the material purchased or incorporated in the works contract after 20th June 2006

	by him before 20th June 2006	shall be subject to the VAT
7	Flat booked in 2007, OC received in 2008, agreement executed and registered in 2009, is there any VAT Liability?	The liability of the VAT will arise, since booking of the flat will be termed as an agreement for sale of flat.
8	Question no. 13 of Trade Circular 06/08/2012 is not clear Question: What will be VAT implications where mere advances are received from customers and agreement for sale is not executed with the customer? Answer: There is no Tax Liability.	This answer seems to be in case where no work has commenced at the site and advance is received from investor. Since the VAT is to be collected from customer. It is advisable that tax is collected when advance is received from actual customer and paid. However in case of sale to an investor, it is advised that the VAT is paid at the time of entering into agreement in accordance with the trade circular issued by the Dept.
9	Can a Member adopt separate method for the sale prior to 1st April 2010 and on or after 1st April 2010 in the same project which is started and partly sold even before that date? In such cases, how to avail 1% composition scheme for the agreements, i.e., whether prorate disallowance of set off on the basis of area sold before and after 1st April 2010 and unsold after completion will be acceptable.	Reply to FAQ 26 dated 27/08/12 provides the answer – The composition scheme of 1% is applicable in respect of agreement registered on or after 1st April 2010, irrespective of the method adopted for periods prior to 01/04/2010. However, set-off or deductions earlier claimed in respect of such agreements will have to be reversed It appears to be more prudent not to claim prorate set off for Flats sold after 01/04/2010 under 1% composition scheme (instead of reversal) since we know now for sure that the flats are to be taken in 1% scheme.

10	Flat sold prior to 1st April 2010, afterwards the sale is cancelled and the Flat re-sold after 1st April 2010 Will the liability of VAT be 1% for the second sale? How can refund be claimed / adjusted for the cancelled flat	There are two parts to this. In case of period upto 30.09.2012, all cancellations should be eliminated and VAT should be paid on the actual sale happened. Post 30.09.2012, if VAT is paid on cancelled transaction, then the same should be claimed as refund. Because on the date of agreement, Dealer will not be knowing about the cancellations, and hence VAT would be paid on that agreement. The same shall be claimed as refund on cancellation.
11	Clarity on Input Tax Credit – it belongs to whom? What is the Trade practice in other industries?	ITC is the reduction in output tax liability. This avoids cascading effect of VAT and helps it to achieve the shifting of burden of tax on the ultimate buyer / consumer. Therefore, on the face of the invoice full tax is to be collected and while computing the net tax payable by the seller, the ITC is deducted. Across the industries [trading and manufacturing, infrastructure, hotel etc] VAT is collected at the applicable rate on the face of the invoice. Generally, while fixing the unit price; the ITC available is factored so that the burden of tax passed on at each level of sale is to the extent of value addition only. The buyer is indirectly passed on the ITC by way of reduction in unit price.
12	What to do in cases where the amount is collected from proceeds	Encashment of escrow account can be termed as 'collection of vat' in view of

	of the Escrow Account and kept by the Members until the VAT liability is discharged on or before 31st October 2012 in Fixed Deposit Account in any other Account	the escrow agreement that would have been entered into with the buyer. If it is kept in fixed deposit and agreed to be refunded in the event the same is found to be in excess of VAT liability [per flat owner], such amount cannot be treated as excess tax collection and cannot be forfeited. The developers should demonstrate that the excess amount is in fact refunded.
13	What to do in cases where surplus amount is collected (over and above the actual payout of the VAT liability) and the balance amount is retained thereafter as Deposit until completion of the Assessment in name of the Member in fresh Escrow Account in name of the Customer	As long as amount lying in the Escrow account is not utilized for any purpose in the business and is kept in separate account and identity of the VAT payer is available, the same can be retained till the liability of VAT is crystalized on the assessment completed by the Authorities.
14	Once the Member has calculated his VAT liability and has ascertained it Customer wise, it shall have to be recovered by the Member from the Customers to make payment of the same to VAT department on or before 31st October 2012 so that the members do not incur liability of interest and penalty What if the Customer does not pay - recovery of VAT is very difficult if possession has been given to the buyer and VAT has not been collected at all?	MVAT Act does not prohibit a dealer from collecting the taxes from the consumer subject to the condition that no amount should be collected as a tax more than the actual tax payable. Recently Bombay High Court has held that dealer in the matter of tax is not the agent of the Government, he discharges his liability on his own account. Under the Act, the liability is that of dealer; though he is permitted at his discretion to collect the same from the customer. The Developer shall have to pay the liability of the VAT, irrespective of his ability to collect the VAT from the

		customer. Developers' ability to collect the VAT shall also depend upon the Clauses in the Agreement of sale.
15	The Members shall now be paying VAT amount without interest and penalty before 31st October 2012. If later on decision of Supreme Court comes to pay with interest and penalty, then at that time how to collect from the customers. What should be done to guard against the same?	If the agreements provide for recovery of interest and/or penalty, the builder may collect the same even at the later date. Presently, when the tax amount is being collected, the letter acknowledging such payment may also reiterate that the liability of interest and / or penalty may be called upon at a later date if the builder is asked to pay it at a later date.
16	How do we deal with the following questions of the Customers	
	- We have already paid the amount in Escrow or the Bank Guarantee, then why we should bear interest, additional interest and penalty etc	These are contractual matters, the answer depends upon the actual facts of the agreement and correspondence with the customers at the time of taking escrow / bank guarantees. Can be discussed in person with facts in hand
	- VAT is liability of the Builder	Section 6 of the MVAT Act provides for the levy of sales tax (VAT). Accordingly, the sale is subjected to tax on the turnover of the sales. The scheme of indirect taxation requires the chain of seller to charge the tax on their sales and ultimately burden of such sales tax / vat is on the buyers / consumers. The Act does not prohibit the seller from collecting the tax from

		the buyers. Thus the seller, in the present context builder, is allowed to collect the same from buyers. In fact, Section 60(2) prohibits collection of tax in excess of payable on the sale transaction from any buyer. Thus, the scheme allows the seller to collect and pass on the burden of tax to the buyer.
	- VAT liability is between 0.30% to 2.00%, it means that liability in their minds is net of the Input Tax Credit.	It is advisable that in respect of the period upto 30.09.12, the calculations of the VAT liability (before ITC) is given to customers, so as to eliminate such questions by the Customer
17	VAT is payable as per the methods available as per the Act – i.e., Rule 58 or composition u/s 42(3)	Please refer to para 1.
18	Is late fee of Rs. 5000 per quarter will be continue or it is also waived off by Supreme Court?	The Supreme Court order paragraph 3 (ii) and (iii) and (iv) read together gives impression that the developers need to pay only the tax amount. Therefore interest, late fees, penalties by whatever name called is not required to be paid. It must be clarified that the above relief is pursuant to interim order for the specific purpose of and subject to payment of tax before 31-10-2012. It cannot be construed as permanent waiver of the interest penalties etc.
19	Whether Developer can recover VAT from customers it is liable to pay for the un-registered period. Whether it will depend upon grant of	In our opinion, a dealer who is registered is entitled to collect by way of tax in respect of 'any sale of goods' under the provisions of the Act. A

	Administrative Relief by the Department.	plausible view is that the phrase 'any sale of goods' referred to in section 60 (2) may include collection by the dealer in respect of period anterior to the grant of registration, more so, when there is no express prohibition in this regard.
20	In case of Flat sold after the application is made for grant of OC, would the VAT be applicable as the building cannot be deemed to be under construction at that point of time, it is just that grant of OC was pending for one reason or the other.	The Liability of the VAT is payable upto the date of completion. The completion of construction will be determined by the facts of each of the case. Occupation Certificate shall be conclusive evidence to determine that construction is completed. Also Architects certificate and also Books of Accounts, can also be evidence to decide that the construction is completed. Once the work is completed the liability of payment of VAT is not there for flats sold thereafter
21	Under rule 58 (1A), how the land rebate per sq feet should be calculated.	The land value shall be deducted as per actual cost or as per the rate available in SDR. The method for calculating the land cost can be any of the following alternatives The Land value to be calculated as per the SDR or actual cost whichever is higher, divided by the total FSI of the land as certified by architect shall determine the per sq ft land value. The Land value shall be frozen as on the date of the agreement of sale. The FSI consumed in respect of each of the flat is also to be certified as per the plans,

		The land cost thus is to be deducted by multiplying FSI of the flat with the rate determined as above.