

# Contents

	PAGE
<i>About The Authors</i>	I-5
<i>Preface</i>	I-7
<i>Chapter-heads</i>	I-9
<i>List of Cases</i>	I-17

## 1

### **JOINT DEVELOPMENT ARRANGEMENT FOR REAL ESTATE**

<b>1.1</b>	Nature of Joint Development Arrangement (JDA)	1
<b>1.2</b>	Different Forms of Joint Development Arrangement	2
<b>1.3</b>	Structuring of Joint Development Agreement	3
<b>1.4</b>	Factors having bearing on terms & conditions of Joint Development Agreement	6
<b>1.5</b>	Peculiar features of Real Estate Projects Developed under JDA	6
<b>1.6</b>	Significant issues in drafting of Joint Development Agreement (JDA)	8
<b>1.7</b>	Significant Income Tax Issues Involved	9

## 2

### **TAX ISSUES FOR REAL ESTATE DEVELOPER**

<b>2.1</b>	Method of Accounting for Revenue Recognition for Real Estate Developer	13
<b>2.2</b>	Appropriate Method for Taxability of Real Estate Developers	15
<b>2.3</b>	Judicial controversy regarding adoption of Completed Contract Method (CCM) or Percentage of Completion Method (PCM) by the Real Estate Developer	17
<b>2.4</b>	Judicial view to the proposition that in the absence of specific provision in the Act, income computed as per books of account prepared as per Accounting Standards to be considered for tax computation purpose	31

	PAGE
<b>2.5</b> Significance of method of accounting regularly followed as per the provision of section 145 of the Income-tax Act in the case of real estate developer	33
<b>2.6</b> Whether Accounting Standard/Guidance Note issued by ICAI are binding for computation of income even when not notified under section 145(2) of Income-tax Act	37
<b>2.7</b> Whether Real Estate Developer can follow CCM for tax computation purpose even after issue of revised Guidance Note (Revised 2012)	38
<b>2.8</b> In case, assessee follows Completed Contract Method of accounting (CCM), whether income of the assessee can be recomputed and assessed by the tax authorities on the basis of Percentage of Completion Method (PCM) of accounting	40
<b>2.9</b> Whether Assessing Officer can change the estimates used by the assessee for the purpose of accounting and finalization of financial statements and substitute his own opinion or estimates for computing income of the assessee	41
<b>2.10</b> In case assessee does not follow Accounting Standard/Guidance Note and auditor does not qualify audit report, whether AO can reject the books of account and substitute his own opinion?	41
<b>2.11</b> Applicability of method of revenue recognition by the developer operating as Non-Corporate Entity	43
<b>2.12</b> Relevance of “Transfer” of Real Estate in case of taxation of real estate developer	44
<b>2.13</b> Foreseeable losses provided in the books of account following PCM- Whether allowable as business expenditure or contingent in nature?	45
<b>2.14</b> Significance of Principle of Matching Concept in case of real estate developer	49
<b>2.15</b> Valuation of Inventory or Work-in-Progress by real estate developer	50
<b>2.16</b> Applicability of provision of MAT in case of provision of foreseeable losses	51
<b>2.17</b> Taxability of retention money in the case of contractors	52
<b>2.18</b> Allowability of demolition cost incurred by real estate developer	54
<b>2.19</b> Earnest Money or initial lump sum amount paid by real estate developer - Allowability as business expenditure	54
<b>2.20</b> Taxability of rental income from immovable property held as stock-in-trade	55
<b>2.21</b> Year of allowability of sale commission paid by real estate developer	57
<b>2.22</b> Year of allowability of advertisement expense incurred by the real estate developer	59
<b>2.23</b> Year of Allowability of borrowing cost incurred by real estate developer	59

	PAGE
<b>2.24</b> Whether real estate developer can recognize real estate as investment asset	63
<b>2.25</b> Unaccounted income found in the case of developer - Whether taxable as business income or income under section 69	63
<b>2.26</b> Income towards transfer charges received by developer in the course of development of the project	64
<b>2.27</b> Some asset or common amenities developed in the course of development of real estate project	65
<b>2.28</b> Cancellation of real estate booking	65
<b>2.29</b> Whether receipt of 'On Money' by real estate developer can be taxable as per method of accounting regularly employed	65
<b>2.30</b> Detection of evidences relating to unaccounted income as well as unaccounted expenses - Manner of addition	67
<b>2.31</b> How to deal with the issue regarding extrapolation of receipt of 'on money' in real estate project	68
<b>2.32</b> Breakdown of Joint Development Agreement	69
<b>2.33</b> Best judgment assessment made by A.O. in the case of receipt of 'on money' by the assessee	70
<b>2.34</b> Whether addition can be made on the ground that different units/flats have been sold by the assessee at different prices	70
<b>2.35</b> Year of credit of TDS in case of an assessee following project completion method	72
<b>2.36</b> Allowability of provision for estimated liability on purchase of TDR and other expenses	72
<b>2.37</b> Disallowance u/s 40(a)(ia) - Whether to be reduced from WIP?	73

### 3

#### **HISTORY OF ACCOUNTING STANDARDS APPLICABLE TO REAL ESTATE DEVELOPER**

<b>3.1</b> Introduction	75
<b>3.2</b> Scope of Accounting Standards applicable to real estate developer	76
<b>3.3</b> Guidelines regarding accounting policies to be followed by the real estate developers	76
<b>3.4</b> Significant Feature of Accounting Standard-7 on Construction Contracts (AS-7) - (Issued in 1983)	78
<b>3.5</b> Significant Feature of Accounting Standard-7 on Construction Contracts (AS-7) (Revised 2002)	79
<b>3.6</b> Significant features of Accounting Standard-9 on revenue recognition (AS-9)	79
<b>3.7</b> Principle of Revenue Recognition under Accounting Standard-9	80

	PAGE
3.8 Significant Features of Guidance Note on revenue recognition by real estate developer issued in 2006 by ICAI	82
3.9 Guidance Note on Accounting for real estate transactions issued in 2012 by ICAI	84

#### 4

### **ANALYSIS OF GUIDANCE NOTE ON ACCOUNTING FOR REAL ESTATE TRANSACTIONS (REVISED 2012)**

4.1 Authority of Guidance Note issued by the Institute of Chartered Accountants of India (ICAI)	85
4.2 Objective and Scope of the guidance note on accounting for real estate transactions (Revised 2012)	87
4.3 Application of accounting principle for real estate transactions	89
4.4 Application of Principles of AS 9 in respect of sale of goods to a real estate project	94
4.5 Application of percentage completion method in respect of real estate transaction in the nature of construction contracts	95
4.6 Recognition of future losses	115
4.7 Circumstances when PCM may be deferred to be applied	117

#### 5

### **REVENUE RECOGNITION FOR REAL ESTATE DEVELOPER UNDER IFRS**

5.1 IFRIC 15 - Accounting for Real Estate	119
5.2 Recommendations of IFRIC 15	120
5.3 Salient Features of IFRIC 15	121
5.4 Introduction of IFRS 15	124
5.5 IFRS 15 - "Revenue from contracts with Customers"	124
5.6 Scope of IFRS 15	125
5.7 Revenue recognition by real estate developer as per IFRS 15	128

#### 6

### **IMPACT OF INCOME COMPUTATION AND DISCLOSURE STANDARD**

6.1 Income Computation and Disclosure Standard	139
6.2 Text of section 145	139
6.3 Historical background of ICDS	140
6.4 Applicability of ICDS for tax computation purposes	140
6.5 Income Computation and Disclosure Standard III relating to "Construction Contracts"	141

	PAGE
6.6	Income Computation and Disclosure Standard IV relating to “Revenue Recognition” 146
6.7	Differences between ICDS-III and Accounting Standard-7 148
6.8	Impact of ICDS on Real Estate Transactions and Real Estate Developer 150

## 7

### **TAX ISSUES FOR REAL ESTATE OWNER**

7.1	Determination of tax liability of the real estate owner 151
7.2	Determination of Real Estate/Land Transferred by the Owner- Whether in the nature of capital asset or business asset and tax issues emerging therefrom 152
7.3	Conversion of capital asset into business asset - Applicability of section 45(2) 156
7.4	Determination of the Year of ‘Transfer’ of capital asset 157
7.5	Determination of sale consideration of the capital asset transferred 190
7.6	No tax liability when land transferred is in the nature of rural agricultural land 199
7.7	Determination of land contributed by land owner - Whether in the nature of long term or short term capital asset 200
7.8	Tax issues when land is transferred by land owner as business asset 201
7.9	Breakdown of Joint Development Agreement 208

## 8

### **CAPITAL ASSET vs. BUSINESS ASSET**

8.1	Principles Enunciated by Judicial Pronouncements as to whether a Transaction is in the Nature of Business or Investment 211
8.2	Guidelines issued by CBDT 215
8.3	Summary of tests to determine the transaction as business income or capital gain 220
8.4	Judicial Pronouncements regarding Significant issues relating to capital gain or business income 222

## 9

### **ANALYSIS OF PROVISION OF SECTION 45(2) REGARDING CONVERSION OF CAPITAL ASSET INTO STOCK IN TRADE**

9.1	Text of section 45(2) 228
9.2	Background of section 45(2) 228
9.3	Objective behind insertion of section 45(2) 229
9.4	Provision of section 45(2) - In nutshell 230

	PAGE
9.5 Salient features of section 45(2)	231
9.6 Significant issues emerging out of the provision of section 45(2)	236
9.7 Tax implication in case of conversion of stock in trade into capital asset	245

## 10

### ANALYSIS OF PROVISIONS OF SECTION 2(47)

10.1 Text of section 2(47)	250
10.2 Historical Background of section 2(47)	251
10.3 Scope of section 2(47)	251
10.4 Salient Features of section 2(47)	252
10.5 Significant Components of section 2(47)	254
10.6 Significant issues emerging out of clause (v) relating to part performance of a contract	264

## 11

### ANALYSIS OF PROVISION OF SECTION 50D

11.1 Fair Market value deemed to be full value of consideration in certain cases as provided under section 50D	275
11.2 Background for Introduction of section 50D	275
11.3 Salient features of the provision of section 50D	279
11.4 Applicability of section 50D to joint development transactions of real estate	281
11.5 Significant issues arising out of section 50D	281

## 12

### TAXABILITY OF CAPITAL GAIN ARISING ON TRANSFER OF AGRICULTURAL LAND

12.1 Text of section 2(14)(iii)	287
12.2 Historical Background of definition of 'Capital Asset' in the nature of agricultural land	288
12.3 Meaning of rural agricultural land w.e.f. A.Y. 2014-15	289
12.4 Significant issues to determine whether land transferred is Agricultural Land	291
12.5 Gain arising from sale of rural agricultural land would be agricultural income not liable for MAT	299
12.6 Profit arising on sale of rural agricultural land may be exempt as agricultural income u/s 2(1A) even if the transaction is treated as adventure in the nature of trade	300
12.7 Agricultural land held as business asset - No capital gain on acquisition by Government	301