



# BOWMANS

THE VALUE OF KNOWING

## INTRODUCTION TO REAL ESTATE JOINT VENTURES

Alex Njage



# JOINT VENTURES GENERALLY

## What is a joint venture?

- “a commercial alliance” or “collaborative arrangement” between two or more independent entities to combine resources in achieving a common business goal.

## How does it work?

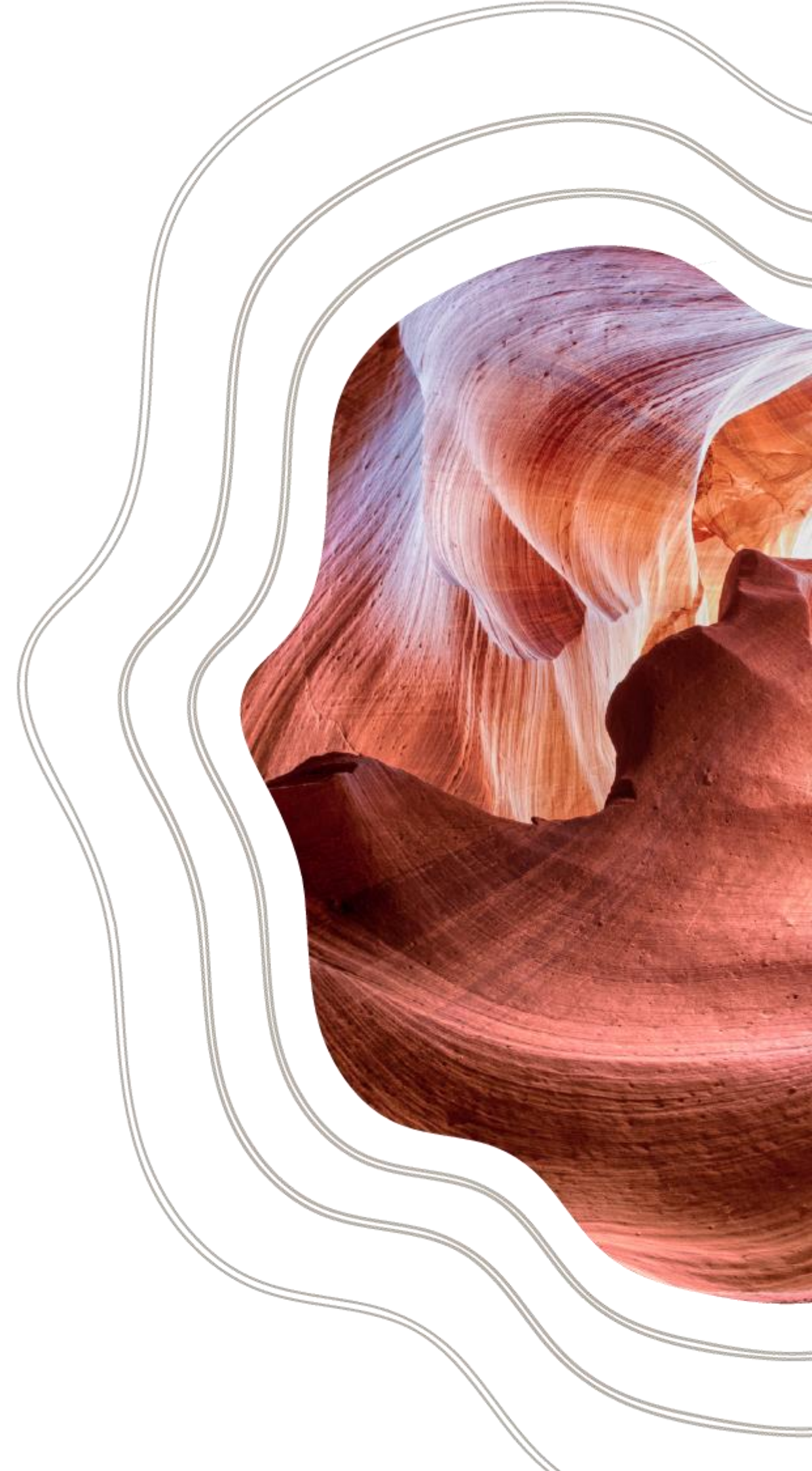
- The parties determine the following;
  - ✓ **Commercial objective**
  - ✓ **Possible special purpose vehicle**
  - ✓ **Contributions**
  - ✓ **Profit sharing**
  - ✓ **Governance/ control**
  - ✓ **Exit strategy**
  - ✓ **Third party consents or regulatory approvals**



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## STRUCTURING



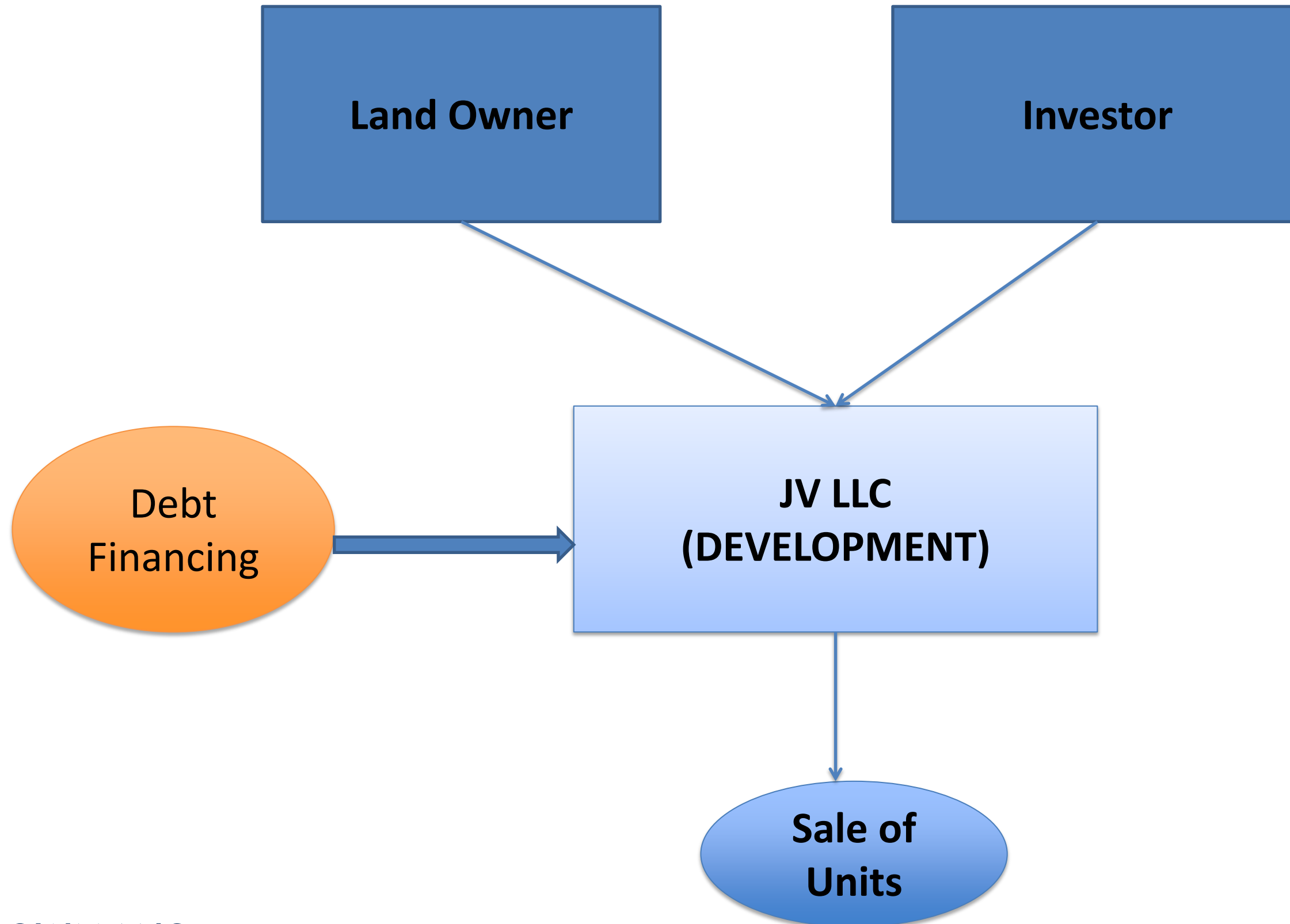


# STRUCTURING OPTIONS

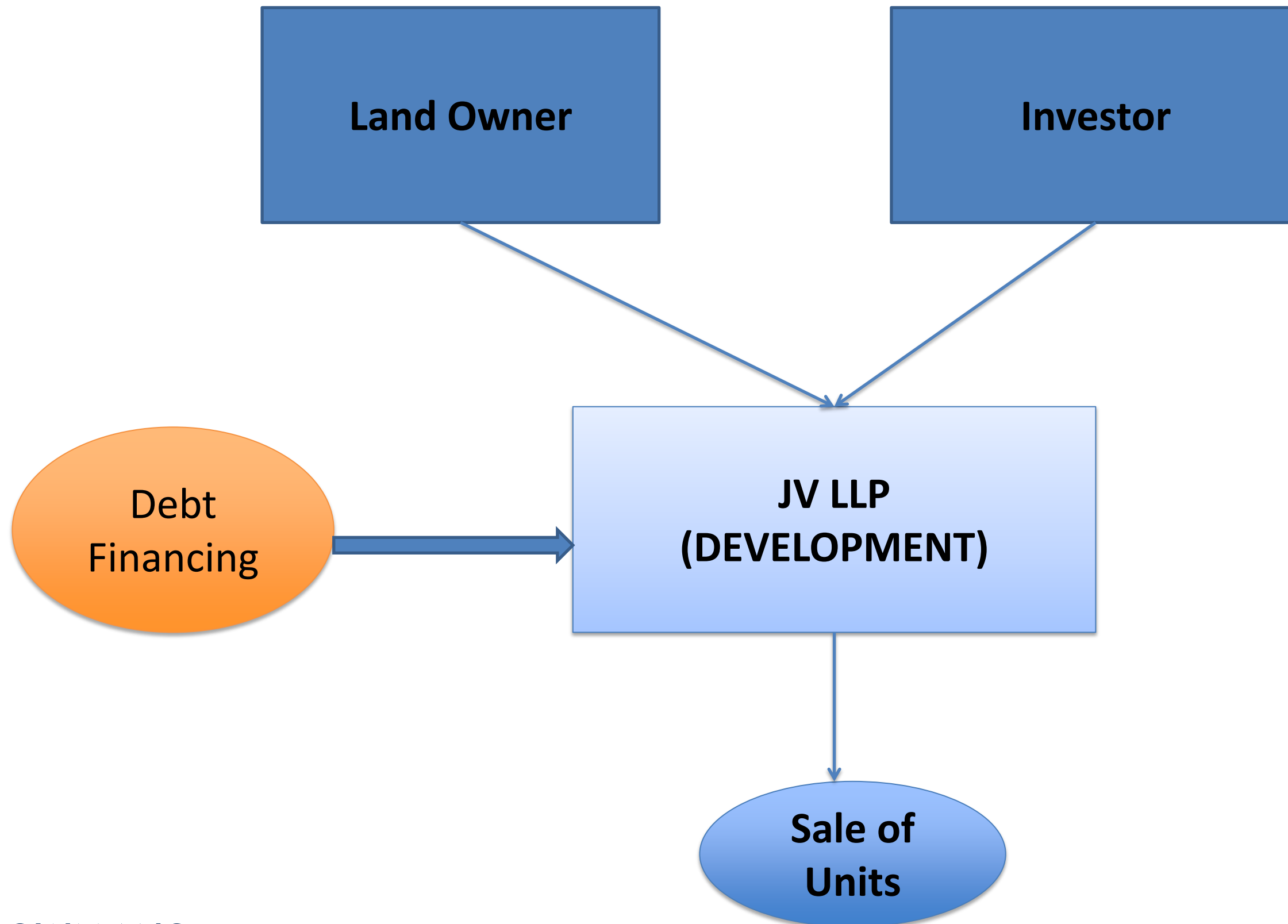
A joint venture can be structured as follows

- Unincorporated Joint venture
- Limited liability company
- Limited liability partnership

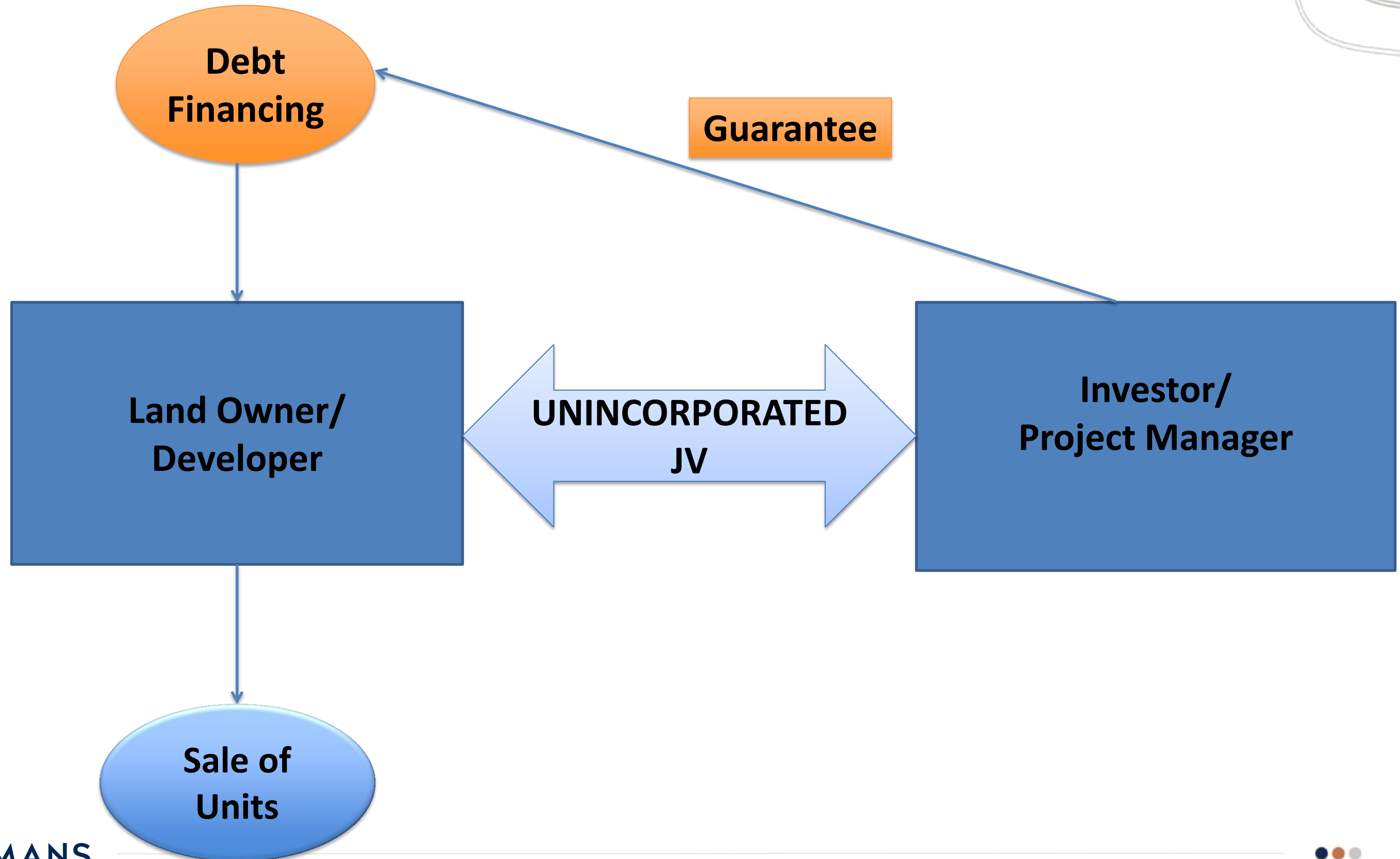
# LIMITED LIABILITY COMPANY JOINT VENTURE



# LIMITED LIABILITY PARTNERSHIP JOINT VENTURE



# UNINCORPORATED JOINT VENTURE





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**THANK YOU**







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## TAXATION OF PROPERTY

Nikhil Hira



# RELEVANT TAXES

## What taxes are generally applicable

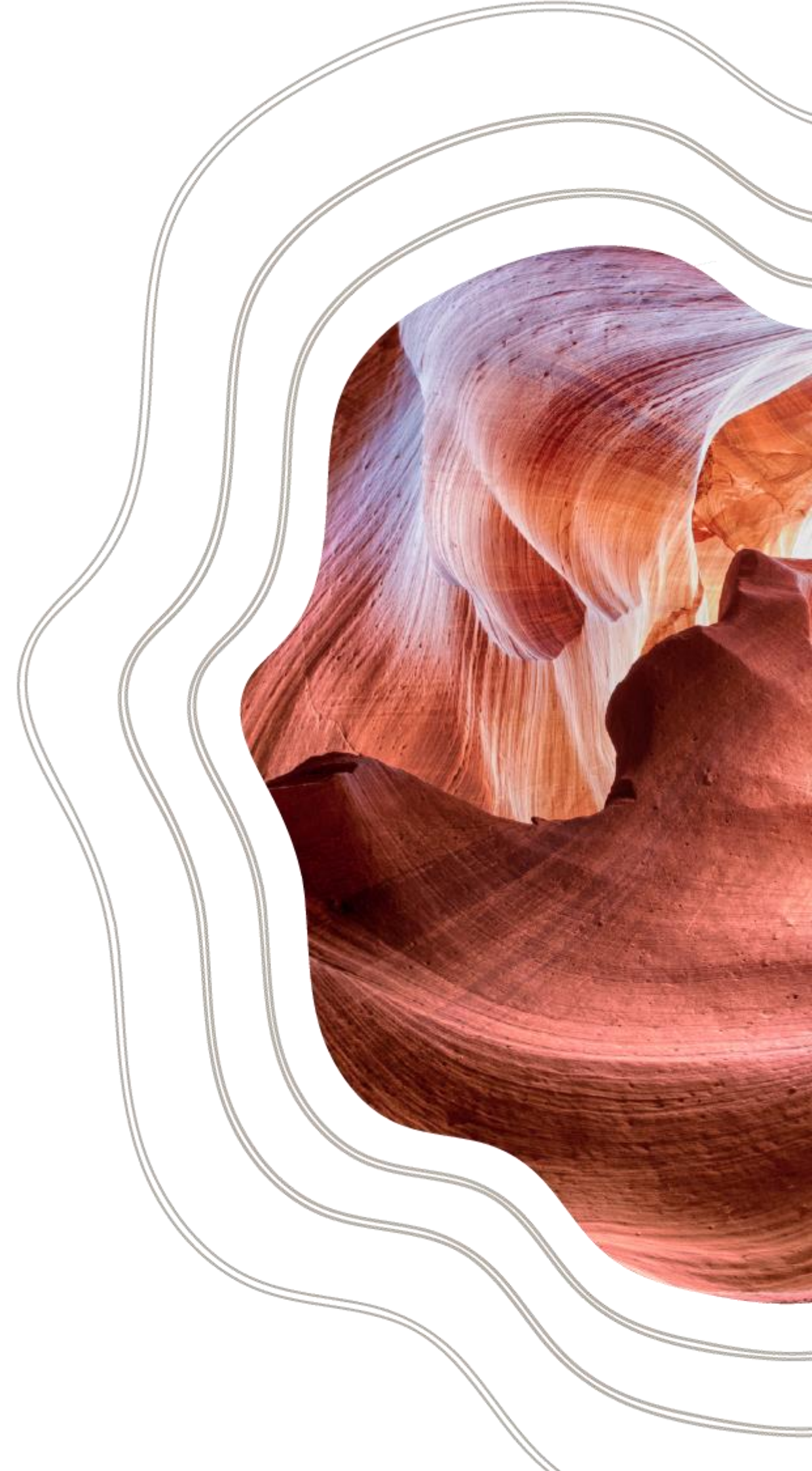
- **Income tax under the provisions of the Income Tax Act Cap 470**
- **Capital gains tax under the provisions of the Income Tax Act Cap 476**
- **VAT under the provisions of the Value Added Tax Act, 2013**
- **Stamp duty under the Stamp Duty Act Cap 480**
- **County taxes**



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**INCOME TAX**





# INCOME TAX APPLICABLE LAW ON INCOME

## Income Tax Act Cap 470

- **Section 3(2)(a)(iii) is the charging section**
  - Gains or profits from a right granted to another person for use or occupation of property
- **Section 6 expands the definition to include royalties, rent, premium or similar consideration received for the use or occupation of property**
- **Section 15(7)(e)(1) classes rights granted to other persons for the use or occupation of immovable property as a separate source**

# INCOME TAX APPLICABLE LAW

## Income Tax Act Cap 470

- **Section 16 deals with what is *not* deductible**
  - Section 16(1) no deduction if not wholly and exclusively
  - Section 16(1) no deduction if capital not revenue
  - Section 16(2)(f) no deduction for a non-resident without a PE for deemed income under Section 10
- **Second Schedule of the act for capital allowances**
  - Industrial building allowances
  - Commercial building allowances
  - Investment deduction
  - Hotels
  - Agriculture



# RATES OF TAX AND WITHHOLDING TAX

- **Section 10 in respect of income from the use of property that is deemed to be derived from Kenya**
- **Section 34(2)(c) for income of a non-resident person without a PE for rent , premium or similar consideration for the use or occupation of property**
- **Section 35(1)(c) for payments to a non-resident person without a PE in Kenya for rent , premium or similar consideration for the use or occupation of property, except aircraft, aircraft engines, locomotive or rolling stock**
- **Section 35(3)(j) providing for withholding tax on for rent , premium or similar consideration for the use or occupation of immovable property to be deducted by an appointed agent**
- **Third Schedule for the rates of tax**
- **Note for a non-resident person earning rental income from property in Kenya 30% tax has to be withheld on gross rentals**

# DEVELOPERS AND INVESTORS

- **Developers generally taxed as corporate income at 30% because among others:**
  - Frequency and number of sales
  - Period held
  - Considered a trading transaction
- **Investors hold property for long term growth**
  - An asset of enduring benefit
  - Length of time held
  - Type of business

# DEVELOPERS AND INVESTORS

- **KRA guidelines consider sale of immovable property to be business in one of the following instances**
  - Where property is sold to make profits as provided in a company's Memorandum and Articles of Association
  - Where acquisition by a company, individual or partnership was with the aim of disposing for a profit
  - Where the manner of the sale is such that the seller is a property dealer or holds the property as stock in trade
  - Where property transactions are recurrent and/or undertaken in a series similar to ordinary trading
  - Where property was acquired or held with a view to developing or selling it
  - Where property is held in the form of shares and disposals fulfil the guidelines above
  - Any other circumstance that indicate that the acquisition, holding and disposal was undertaken within the framework of a business activity

# RESIDENTIAL RENTAL INCOME TAX

- Introduced in 2016 to curb evasion of residential rental income
- Applies to a resident person
- Income accrued in or derived from Kenya
- Income exceeds KES 144,000 per annum but is less than KES 10 million
- 10% on the gross income
- Option to tax on a net basis

# CAPITAL GAINS TAX BASICS

- **Applies to transfer of assets situated in Kenya**
- **Property depends on whether it is a company or an individual disposing**
- **Transfers have to be at market value**
- **Transfer means:**
  - Disposal by sale, exchange or conveyance of property including as gift and even if for no consideration
  - Loss, destruction or extinction of property unless reinstated within 1 year
  - On the abandonment, surrender, cancellation or forfeiture of, or the expiration of all rights to the property
- **No transfer if:**
  - Transfer as security for debt
  - Issuance of shares by a company
  - Vesting in a personal representative on death and subsequent transfer to the beneficiary
  - Trustee to beneficiary
  - Vesting in liquidator or official receiver
  - Transfers between spouses and immediate family, including in a divorce



# CAPITAL GAINS TAX EXEMPTIONS

- **Income charged elsewhere in the act**
- **Plant and machinery granted wear & tear**
- **Principal private residence – 3 years**
- **Land transfers not exceeding KES 3 million**
- **Agricultural property less than 50 acres with conditions**
- **Land under the Land Consolidation Act or the Land Application Act where title registered under the Registered Land Act and transferred for first time**
- **Transfers on death provided transfer or sale completed within 2 years**

# CAPITAL GAINS TAX COMPUTATION

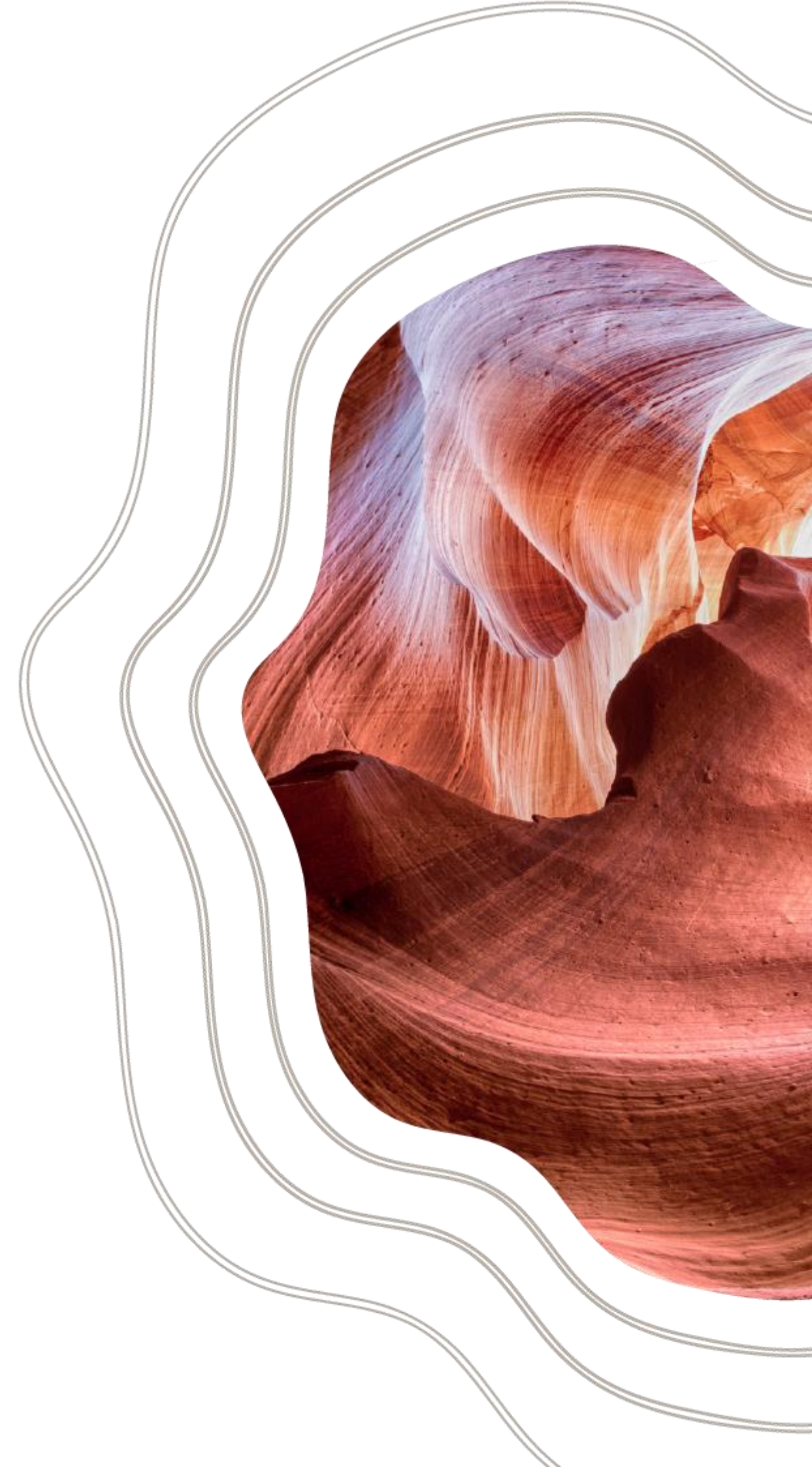
- Sale proceeds as reduced by incidental costs
- Less adjusted cost also reduced by incidental costs
- Result is net gain or loss
- Gain taxed at 5%
- Loss carry forward against future gains



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## **VALUE ADDED TAX**



# VALUE ADDED TAX BASIC CONCEPTS

- **Consumption tax**
- **Ultimate burden of the tax falls on the end consumer generally you and me**
- **Business is simply a collection agent for the government**
- **System is based on economic value add**
- **Uses an input / output system**

# VALUE ADDED TAX BASIC CONCEPTS

- There is a **supply**
- It is **taxable**
- Made by a **taxable person**
- Furtherance of **business**
- Supply **in Kenya** (or importation into Kenya)



# VALUE ADDED TAX BASIC CONCEPTS

- **Exempt Supplies**
  - VAT not applicable; suppliers of these cannot claim input VAT (1<sup>st</sup> Schedule)
- **Zero Rated Supplies**
  - VAT chargeable at zero rate; input VAT can be claimed (2<sup>nd</sup> Schedule)
- **Standard Rate**
  - VAT chargeable at 16%; input VAT claimable
- **Special Rate - 8%**
  - This is a special rate for fuel; input VAT claimable
- **Out of the scope of Kenyan VAT**

# VALUE ADDED TAX BASIC CONCEPTS

	Exempt	Zero rated	Standard rated
Raw materials	100.0	100.0	100.0
Input VAT	0.0	0.0	0.0
Overheads	50.0	50.0	50.0
Input VAT	8.0	8.0	8.0
<b>Total</b>	<b>158.0</b>	<b>158.0</b>	<b>158.0</b>
Claimable input	0.0	8.0	8.0
<b>Cost</b>	<b>158.0</b>	<b>150.0</b>	<b>150.0</b>
Mark up 30%	47.4	45.0	45.0
<b>Selling price</b>	<b>205.4</b>	<b>195.0</b>	<b>195.0</b>
Output VAT	0.0	0.0	31.2
<b>Selling price</b>	<b>205.4</b>	<b>195.0</b>	<b>226.2</b>

# VALUE ADDED TAX BASIC CONCEPTS

- **Tax point**
  - Earlier of:
    - Supply of goods or services
    - Issue of invoice in respect of supply
    - Payment either for the whole or part of the supply
    - Certificate of completion from architect, surveyor or other consultant

# VALUE ADDED TAX BASIC CONCEPTS

- **Input tax**
  - Tax paid on receipt of supply of taxable goods and services by a registered person
  - Tax paid by a registered person on importation of taxable goods and services to be used for business purposes
  - Time limit to claim is 6 months
- **Output tax**
  - Tax which is charged by a taxable person when making taxable supplies

# VALUE ADDED TAX PROPERTY

- Taxable status depends on what the property is
- Letting, leasing etc of land is exempt
- Letting leasing etc of residential premises is exempt
- Letting leasing etc of commercial premises is taxable
- What if there are mixed supplies
- David Mwangi Ndegwa v Kenya Revenue Authority (Civil Suit No. 541 of 2015) complicates
- Part II of the 1<sup>st</sup> Schedule Para 1(k) makes the sale of shares exempt
- There are exemptions available under the 1<sup>st</sup> Schedule for specific types of projects such as recreation parks, hospitals, education institutes etc



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