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### Service Tax on Construction of Complex etc

Construction of complex, building etc. intended for sale to a buyer is a service when whole or part of consideration is received before issuance of completion certificate and is a declared service specified in section 66E of The Act.

Section 66E specified 9 services as declared service and declared services are included in the definition of Service. Construction of complex etc. is one of nine declared services.

Section 66E provides construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority.

As per section 66E if the entire consideration is received after issuance of completion certificate then it is not a service and not chargeable to service Tax.

#### Definitions

##### Applicable before 01.07.2012

"construction of complex" means—

- (a) construction of a new residential complex or a part thereof; or
- (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
- (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;]

"Residential complex" means any complex comprising of—

- (i) a building or buildings, having more than twelve residential units;
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

*Explanation.*—For the removal of doubts, it is hereby declared that for the purposes of this clause,—

- (a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;]

With effect from 01.07.2012 under the new service tax regime

"Residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;

"single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

Which construction constitutes service?

The following construction constitutes service.

1. Construction of complex
2. Construction of Building
3. Construction of civil structure
4. Construction of complex or Building which is a) intended for sale to a buyer, b) wholly or partly, and c) where whole or part consideration is received before issuance of Completion Certificate by Competent authority.

It covers construction of residential , commercial and industrial complex or building etc.

What is Residential Complex?

Definition of Residential complex have gone a sea change after the introduction new service tax law w.e.f 01.07.2012.

Position before 01.07.2012

Residential complex or Buildings which have more than twelve residential unit.

It means if any residential complex or Buildings which have upto twelve residential units was constructed were not liable to service tax.

Construction of residential complex was charged to service tax separately under 65(105)(zzzh) and Industrial and commercial construction was charged to service tax under 65(105)(zzq)

Position after 01.07.2012

Residential complex has been redefined by replacing twelve residential units by one residential units.

It means w.e.f.01.07.2012 any construction of residential complex or Buildings having more than one residential units are chargeable to service tax.

Construction of residential, industrial and commercial complex or building are being charged to service tax under this declared services.

What happens when construction begins before 01.07.2012 and completes after 01.07.2012 having Ten residential units?

Before 01.07.2012 construction of complex or buildings having ten residential units was not covered under the definition and was not chargeable to service Tax. But w.e.f 01.07.2012 complex or Building having ten residential units are chargeable to service tax provided consideration is received after 01.07.2012 but before issuance of completion certificate.

No services tax is to be paid on consideration received before 01.07.2012.

Service tax is to be paid on consideration received after 01.07.2012 even though part of consideration is received before 01.07.2012.

Service Tax on construction of Complex or Building etc. Where builder enters into Joint venture with landowners.

Under this model of constructions the following activities are involved:

1. Landowners give land to builders for construction.
2. Land given to builders with development rights on land
3. Builders make the constructions on the land
4. Builders give some flats to the landlords in consideration of land development rights.
5. Builders sale flats to intending buyer

In the above model of constructions three persons are involved, 1) Landowners, 2) Builders, and 3) flat buyers.

Builders provides service in form of construction of flats in a building or complex. Builders receives consideration against the service provided from two person

1. Landowners in form of development rights
2. Flat buyers in form of money

Service tax is leviable on both considerations received by builders before issuance of completion certificate by competent authority.

Development rights received from landowners for construction of flats in a building or complex before issuance of completion certificate is taxable for construction service provided by builders on account of flats given to landowners. Valuation of taxable service is determined in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006, as the consideration for these flats i.e., value of land / development rights in the land may not be ascertainable ordinarily. Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers

Money received from flat buyers before issuance of completion certificate is taxable for construction service provided by builders on account of flat sold to flat buyers.

Who are competent authority?

Competent Authority to issue CC

1. Municipal Corporation/ Municipality/ local body/Gram Panchayat/ Cantonment Board/ any other authority authorized to sanction building plan.
2. Architect/Chartered engineer/ Licensed surveyor of the respective local Body/ Development or planning authority

Based on above discussion, taxable or non-taxable activities are presented in tabular form.

Activities	Taxable or Non- Taxable
Entire consideration is received after issuance of CC	Not Taxable

Entire or part consideration is received before issuance of CC	Taxable
Sale of Land by Landowners to Builders/Developer	Not Taxable
Flats given to Landowners by builders/developers where Land/Development rights given by Landowners to Builders/Developers	Taxable
Landowners sold flats to customers and received part or entire consideration before issuance of CC	Taxable
Buyer sold/transferred flat to another buyer after paying some consideration	Taxable: Builders shall charge the first buyer on consideration received from him and shall charge the second buyer on consideration received from second buyer. Amount paid by second buyer to first buyer is not taxable.

### Abatement

Notification no 26/2012-ST issued and made effective w.e.f. 01.07.12 which provides a kind of partial exemption from payment of service Tax on some services.

Construction of complex etc. Is one such service listed at sl. no. 12 in aforesaid notification. Service can claim abatement and pay service tax on a lesser value as under:

	<u>Taxable</u>	<u>Non Taxable</u>
a) For a residential unit satisfying both the following condition;		
i) The carpet area of the unit is less than 2000 sq. Ft.	25%	75%
ii) The amount charged for the unit is less than Rs. 1 Crore.		
b) For other than (a) above	30%	70%

### Conditions to be fulfilled to claim abatement:

The following both the conditions are required to be fulfilled to claim abatement:

- i) The CENVAT credit on inputs used for providing taxable service has not been taken under the provisions of CENVAT Credit Rules, 2004
- ii) The value of land is included in the amount charged from service receiver

### Important Points on abatement

- i) If a service provider satisfy only one conditions abatement is not available.
- ii) The CENVAT credit on Capital Goods and Input services can be taken.

For any queries, Please Contact:

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