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Indirect Tax News Alert

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Flash on Service Tax on Construction Services

In brief

The Central Board of Excise and Customs ('CBEC') has issued Circular No.151/2/2012(ST) dated 10th February 2012 clarifying the applicability of service tax under various business models relevant to the construction sector.

Housing Related Business Model

Business Model	Issue	Taxability /Credit	Valuation
Tripartite Model – Sale of land by land owner and construction service provided by builder.	Whether liability to pay service tax on flats/houses to be given by builder (i) to the land owner towards the land development rights (ii) to other buyers.	Prior to 01.07. 2010 – Not taxable After 01.07.2010 – If payment /development rights of the land was received before issue of completion certificate*, service is taxable	Landowner – Land development rights or value of similar flats sold to buyers (other than landowners) nearby to the date at which land is made available. The valuation methods prescribed in this regard are unclear due to some practical difficulties in the dates specified. Therefore, the valuation of the service may present problems in practice. Other buyers – As per the general service tax valuation provisions

Business Model	Issue	Taxability /Credit	Valuation
Re-development Model – Builder undertakes re-construction of new flats on land owned by society.	Whether consideration received by the builder for the construction service provided to society or other buyers is taxable.	Prior to 01.07.2010 - Reconstruction service undertaken by builder/developer not taxable After 01.07.2010 - Construction service provided by builder to buyers (other than society members) taxable if payment made prior to issuance of completion certificate	Value shall be gross amount charged by builder/developer to buyers
Investment Model – Before commencement of project, specified area allotted to members, with an option to take back the money with interest	Whether builder is liable to pay service tax on advance amount received? Position if the investor takes back the money after some time.	Builder is liable to service tax on the advance amount received. If investor opts to take back the invested amount, builder can take credit of service tax paid if refunded to investor.	After 01.07.2010, investment amount shall be treated as consideration paid in advance.

**Authority competent to issue completion service includes architect, chartered engineer or licensed surveyor.*

General Construction Models

- *Conversion Model* - Conversion of untaxed construction/complex or part thereof into a building or civil structure for commerce or industry does not involve any taxable service.
- *Build-Operate-Transfer Model* - Government or its agency and concessionaire and/or contractors are liable to pay tax on the respective services being provided by them such as renting of immovable property, construction service or commission income under business auxiliary service.

Conclusion

The Department has confirmed the non-applicability of service tax with respect to construction of residential complex for the period till 01.07.2010. Appeals that are pending in this matter can take advantage of this circular. In cases where taxes are already paid for services prior to 1.07.2010, builder/customer would have to examine whether they can approach the authorities for a refund.

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