

## Western India Regional Council of ICAI

### Intensive Workshop on Redevelopment of Society

**Subject** : Service Tax – Redevelopment of property of the Society.  
**Date** : Friday, February, 21, 2014  
**Venue** : J. S. Lodha Auditorium, I.C.A.I. Bhavan, Cuffe Parade,  
Mumbai : 400 005  
**Faculty** : CA Naresh K. Sheth

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### PREAMBLE

- Abbreviations:
  - The Act – Finance Act, 1994 (Service tax legislation)
  - The Rule – Service Tax Rules, 1994
  - CCR – Cenvat Credit Rules, 2004
  - POTR – Point of Taxation Rules, 2011
  - Valuation Rules – Service Tax ( Determination of Value) Rules, 2006
- Scope of presentation is restricted to :
  - Service tax implications of Redevelopment of Society's property for:
    - Existing Members
    - Society
    - Builder/ Developer
  - Position on or after 01.07.2012 (Post Negative list based levy of taxation)

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## BUILDERS / DEVELOPERS

### SERVICE TAX POSITION TILL 30.06.2012

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#### SERVICE TAX – POSITION TILL 30.06.2012

- Sale of completed flats / units being a immovable property transaction was not liable to Service tax
- Sale of under construction flats / units were deemed to be Service provided by builder to buyers w.e.f. 01.07.2010
- Abatement of 75% was available and effective tax rate:
  - Before 31.03.2012 – 2.575%
  - 01.04.2012 to 30.06.2012 – 3.09%
- Builder / Developer was **not entitled to Cenvat credit of input, input services and capital goods**
- Service tax levy on sale of under construction flats /units is highly litigative issue and matter is pending before Honorable Supreme Court

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**PRESENT STATUS OF LITIGATION**

- Honorable Punjab & Haryana High Court in **M/s G S Promoters Vs Union of India** [2010-TIOL-813] upheld constitutional validity of service tax levy on builders and developers
- Honorable Bombay High Court in **Maharashtra Chamber of Housing Industry's case** [2012-TIOL-78-HC-MUM-ST] also upheld the levy of Service tax on sale of under construction flats / units
- Honorable Supreme Court, on 30<sup>th</sup> March, 2012, admitted Special Leave Petition (SLP) challenging the above referred order of Bombay High Court
- Legal issues are still open whether:
  - Sale of under construction flats amount to provision of Service?
  - Levy of Service tax on sale of under-construction flats is constitutionally valid?
- The Honorable Supreme Court in it's judgment in case of Larsen & Toubro Ltd/ MCHI and others [2013- TIOL-46-SC-CT-LB] upheld that sale of under construction flat is a "works contract" liable to VAT

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**BUILDERS / DEVELOPERS**

**SERVICE TAX POSITION ON OR AFTER 01.07.2012**

**(NEGATIVE BASED TAXATION REGIME)**

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### MEANING OF TERM "SERVICE" - RELEVANT EXTRACT

- Service means [Section 65B(44) of the Act]:
  - Any activity
  - Carried out by a person for another person
  - For consideration
- It includes **declared service** (Section 66E of the Act)
- It does not include:
  - An activity which constitutes merely, a **transfer of title in goods or immovable property**, by way of sale, gift or in any other manner
  - Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause ( 29A) of the article 366 of the Constitution.

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### MEANING OF TERM "DECLARED SERVICE" – RELEVANT EXTRACT

- **Declared service means** (Section 66E of the Act) :
  - 66E (b) :
    - 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 completion certificate by the competent authority
  - 66E (h) :
    - Service portion in execution of works contract
  - 66 E (e):
    - Agreeing to the obligation :
      - To refrain from an act; or
      - To tolerate an act or a situation; or
      - To do an Act.

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<b>MEANING OF TERM “WORKS CONTRACT”</b>															
<ul style="list-style-type: none"> <li>➤ Service portion in works contract is declared as service u/s 66E(h) of the Act</li> <li>➤ Works contract service means [ Section 65B (54)] :                             <ul style="list-style-type: none"> <li>• Contract involving transfer of goods in execution of such contract</li> <li>• such transfer of goods is leviable to tax as sale of goods; and</li> <li>• such contract is for carrying out:                                     <table border="1" style="margin-left: 40px; border-collapse: collapse; width: 80%;"> <tbody> <tr> <td style="padding: 2px;"><b>Construction</b></td> <td style="padding: 2px;">Erection</td> <td style="padding: 2px;">Commissioning</td> <td style="padding: 2px;">Installation</td> </tr> <tr> <td style="padding: 2px;"><b>Completion</b></td> <td style="padding: 2px;">Fitting out</td> <td style="padding: 2px;">Repair</td> <td style="padding: 2px;">Maintenance</td> </tr> <tr> <td style="padding: 2px;">Alteration</td> <td style="padding: 2px;">Renovation</td> <td colspan="2" style="padding: 2px;">Other similar activity</td> </tr> </tbody> </table> </li> </ul> </li> </ul>				<b>Construction</b>	Erection	Commissioning	Installation	<b>Completion</b>	Fitting out	Repair	Maintenance	Alteration	Renovation	Other similar activity	
<b>Construction</b>	Erection	Commissioning	Installation												
<b>Completion</b>	Fitting out	Repair	Maintenance												
Alteration	Renovation	Other similar activity													
<p style="margin-left: 40px;">of / in respect of movable or immovable property</p>															
<ul style="list-style-type: none"> <li>➤ “Original work” means [Explanation 1 to Rule 2A (ii)]:                             <ul style="list-style-type: none"> <li>• all new constructions</li> <li>• all types of additions and alteration to abandoned / damage structures on land that are required to make them workable</li> <li>• Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise</li> </ul> </li> </ul>															

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<b>SERVICE TAX - POSITION ON OR AFTER 01.07.2012</b>
<ul style="list-style-type: none"> <li>➤ Sale of under construction flats/units is a <b>declared Service U/s 66E(b)</b> of the Act</li> <li>➤ Service portion in Works contract is also a <b>declared service U/s 66E(h)</b> of the Act</li> <li>➤ Consequently it is a service as defined U/s 65B (44) of the Act</li> <li>➤ Sale of completed flat is not a “service” as defined U/s 65B(44) of the Act</li> <li>➤ Effective tax rate in case of sale of flats/ units under construction is as under:                             <ul style="list-style-type: none"> <li>• Premium flats – 3.708% of consideration *</li> <li>• Non – premium flats – 3.09% of consideration *</li> <li>• Commercial units – 3.708% of consideration *</li> <li>* With cenvat availability of input services and capital goods</li> <li>* No cenvat of inputs</li> </ul> </li> <li>➤ Effective tax rate in case of Works contract :                             <ul style="list-style-type: none"> <li>• 4.944% of consideration *</li> <li>* With cenvat availability of input services and capital goods</li> <li>* No cenvat of inputs</li> </ul> </li> </ul>

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<b>SERVICE TAX - POSITION ON OR AFTER 01.07.2012</b>	
<ul style="list-style-type: none"><li>➤ Definition of Service specifically <b>excludes</b> transfer of title in immovable property</li><li>➤ A strong view is prevalent that builders / developers transfer title in immovable property to buyer and hence transaction is not that of Service</li><li>➤ Old issue still remains, whether builder is:<ul style="list-style-type: none"><li>• Seller of property; or</li><li>• Provider of service</li></ul></li><li>➤ In view of specific exclusion of transfer of title in immovable property from 'service' definition, builder / developer are in better position to contend that sale of flat is not a service</li><li>➤ Presentation proceeds with the presumption that builders / developers are liable to Service tax</li><li>➤ In view of supreme court judgment in L &amp; T, sale of under construction flat is to be taxed at 3.09% (or 3.708%) or to be treated as works contract taxable at 4.944%?</li></ul>	
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<p style="text-align: center;"><b>SERVICE TAX ISSUES RELATING TO REDEVELOPMENT OF SOCIETY</b></p>	
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**REDEVELOPMENT - TYPICAL TRANSACTIONS AND DOCUMENTATION**

- Developer pays to the society :
  - Consideration in cash for selling development potential
  - Contribution to corpus fund
- Developer agrees to allot to existing members flat / units in redeveloped building:
  - of area equivalent to their existing flat area (“Rehab flats”)
  - of existing flat area plus free area (“Rehab flats”)
  - extra chargeable area (at concessional rate)
- Developer pays following to existing members:
  - Corpus – to compensate member for consequential increase in maintenance and property tax on redevelopment of building
  - Rent allowance – for temporary alternate accommodation
  - Shifting allowance – to cover shifting cost such as transportation etc
  - Brokerage payment – re imbursement of brokerage for lease premises
  - Hardship allowance

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**REDEVELOPMENT - TYPICAL TRANSACTIONS AND DOCUMENTATION**

- Developer buying flat from existing members for consideration
- Developer taking flat of existing member against ready flat / unit in other project
- Developer may allot :
  - Temporary alternate accommodation in his other project
  - Temporary alternate accommodation in flats/units taken by it on rent
- Developer sells the flats/units to outsiders (“saleable flats”)
- Developer usually enters into following agreements:
  - Development agreement with the society
  - Individual flat agreement with the existing members
  - Agreement to sale with outside buyers

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## **SOCIETY AND EXISTING MEMBERS**

### **SERVICE TAX IMPLICATIONS**

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#### **SOCIETY AND EXISTING MEMBERS - ISSUES**

- Whether following receipts are liable to service tax in the hands of society:
  - Contribution to Corpus or other funds
  - Consideration for selling development potential to the developer
- Whether following receipts are liable to service tax in the hands of members:
  - Hardship allowance
  - Shifting allowance
  - Rent allowance for alternative accommodation
  - Corpus
  - Consideration for vacating the flat/unit
  - Exchange of old flat with ready flat in other project of developer
- Whether members are liable to bear service tax in respect of :
  - Rehab flats allotted free of cost
  - Extra area purchased

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**SOCIETY AND EXISTING MEMBERS - ISSUES**

- If rehab flats are liable to service tax, whether existing members are liable to discharge service tax liability under Reverse charge mechanism in following cases?
  - When developer is a non corporate entity; and
  - Member is corporate business entity
- Above referred issues to be examined with reference to :
  - Definition of “service” as defined U/s 65B(44) of the Act
  - Definition of “declared service” as defined in U/s 66 E (e) of the Act
  - Definition of “works contract” as defined U/s 65B(54) of the Act
  - Notification No. 30/2012–ST dated 20.06.2012 for Reverse Charge Mechanism

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**DEVELOPERS**

**SERVICE TAX IMPLICATIONS**

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**REHAB FLATS/UNITS – TAXABILITY PRIOR TO 01.07.2012**

- Whether Developer was liable to service tax in respect of Rehab flats during the period prior to 01.07.2012 ?
  - Section 67 of Act required consideration in kind to be included in the value of taxable services
  - Works contract service was liable to service tax w.e.f. 01.06.2007
  - Sale of under construction flat was liable to service tax w.e.f. 01.07.2010
  - Services relating to “residential complex” was taxable
  - “Residential complex” was defined U/s 65(91a) of the Act which excluded construction for personal use
  - Definition of “residential complex” was common for “construction service” and “works contract service” categories
  - As rehab flats are for personal use, same cannot be treated as “residential complex” as defined U/s 65(91a) of the Act
  - Rehab flats related service is not for “residential complex” as defined under the law and hence was not taxable

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**REHAB FLATS/UNITS – SERVICE TAX IMPLICATIONS PRIOR TO 01.07.2012**

- Circular No.151/2/2012–ST dated 10.02.2012 clarified as under:

*“reconstruction undertaken by a building society by directly engaging a builder/ developer will not be chargeable to service tax as it is meant for the personal use of the society/ its members.”*
- The developers were not liable to service tax in respect of rehab flats
- **Whether commercial units in redeveloped building allotted to existing members of the society were also not taxable?**

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**REHAB FLATS / UNITS – SERVICE TAX IMPLICATIONS ON OR AFTER 01.07.2012**

- Whether developer is liable to service tax in respect of rehab flats / units?
- If such service is liable to tax then :
  - What is the point of taxation of such service?
  - How to value such service?
- In respect of redevelopment project, whether developer is :
  - A “builder” in respect of entire project (Rehab and Saleable flats)
  - A “works contractor” for entire project (Rehab and Saleable flats)
  - A “works contractor” for Rehab flats and “builder” for the saleable flats
- Difference in tax implications:

Position	Effective tax rate	Cenvat eligibility
Works Contractor	4.944% of Consideration (whether to include land value or not?)	Input services & capital goods – available Inputs – not available
Builder	3.09% or 3.708% of consideration (including value of land)	Same as above

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**REHAB FLATS/UNITS – TAXABILITY ON OR AFTER 01.07.2012**

- Whether Developer is liable to service tax in respect of Rehab flats/units on or after 01.07.2012 ?
  - “Works contract service” and “Construction service “ categories are no longer on statue book w.e.f. 01.07.2012
  - Definition of “residential complex” is not applicable on or after 01.07.2012
  - Circular No.151/2/2012–ST dated 10.02.2012 is no longer valid and subsisting after introduction of negative list based levy w.e.f. 01.07.2012
  - Service defined U/s 65B(44) of the Act includes almost all commercial activities
  - Declared service defined U/s 66E of the Act includes:
    - Sale of under construction flats/ units
    - Service portion in works contract
  - Section 67 of Act requires consideration in kind to be included in the value of taxable services
  - Letter F.No V/ST – I /Tech – II / 463/ 11 dated 31.08.2012 from service tax commissioner, Mumbai – I to MCHI clarifies that rehab flats/units are taxable

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**REHAB FLATS/UNITS – TAXABILITY ON OR AFTER 01.07.2012**

- Whether rehab flats are not taxable as same are not falling under definition of “Declared service” as defined U/s 66E (b) of the Act on following grounds:
  - Rehab flats are not intended for sale to buyer
  - Allotment of rehab flats cannot be regarded as “sale”
  - Existing members are not buyers of rehab flats
- Whether one can contend that developer transfers title in the rehab flats / units and hence same is excluded from definition of “Service” ?
- Redevelopment of the society (to the extent of Rehab flats) is a barter transaction:
  - Developer provides services of reconstruction of society building
  - Society grants balance development potential to the developer
- Whether developer is liable to service tax on value of redevelopment services under charging Section 66B of the Act:
  - There shall be levied a tax (herein after referred to as service tax)
  - At the rate of 12%
  - On the **value** of all services
- Department is of the view that rehab flats / units are liable to service tax
- Many reputed developers have taken conservative position and accepted the departmental view on taxability of rehab flats / units

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**REHAB FLATS/UNITS – POINT OF TAXATION**

- “Point of Taxation” (‘POT’) means the point of time when service shall be deemed to have been provided [Rule 2(e)of POTR]
- It signifies date of occurrence of taxable event
- POTR determines the point of taxation
- Relevant service is a “continuous supply of service” for POTR
- POT for services in respect of rehab flats U/R 3 would be earlier of:
  - Invoice date where invoice issued within 30 days of completion of service
  - If invoice not issued within 30 days, the date of completion of service
  - Date of receipt of payment
  - Where advance is received towards provision of taxable service, the POT shall be date of receipt of such advance
- Date of completion for continuous supply of service shall be:
  - Date of completion of an event
  - Requiring service receiver to make payment to service provider as per contract
- Service tax liability accrues on POT date

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REHAB FLATS/UNITS – POINT OF TAXATION	
<ul style="list-style-type: none"><li>➤ Provisions, Rules, Notifications, circulars etc. subsisting on POT shall govern:<ul style="list-style-type: none"><li>• Taxability</li><li>• Applicable tax rate</li><li>• Valuation</li><li>• Cenvat Applicability</li><li>• Due date for tax payment</li></ul></li><li>➤ POT arises when developer gets irrevocable development rights (consideration) unconditionally from society for allotment of rehab flats</li><li>➤ One should examine relevant agreement carefully to decide POT from following probable dates:<ul style="list-style-type: none"><li>• Date of execution of development agreement</li><li>• Date of developer getting vacant possession free from all encumbrances</li><li>• Date on which developer gets necessary permissions (IOD, Commencement Certificate etc) from local authority or government to commence the construction</li><li>• Date on which developer completes the construction of area earmarked for existing members and society</li><li>• Date of full and final payment for development rights</li><li>• Date of completion of entire project</li><li>• Any other date on which the substantial rights in land are unconditionally and irrecoverably bestowed on the developer</li></ul></li></ul>	25
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REHAB FLATS/UNITS – POINT OF TAXATION	
<ul style="list-style-type: none"><li>➤ The liability to discharge service tax arises on POT even if construction is not started.</li><li>➤ Whether development agreements in respect of which POT has already arisen before 30.06.2012 is not liable to service tax even if:<ul style="list-style-type: none"><li>• Construction started on or after 01.07.2012</li><li>• Construction started before 30.06.2012 but completed on or after 01.07.2012</li><li>• Possession of Rehab flats given on or after 01.07.2012</li></ul></li></ul>	26
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<b>REHAB FLATS/UNITS – VALUATION</b>							
➤ If service in respect of Rehab flats/units is taxable, how to value such services for discharging service tax liability?							
➤ Redevelopment transaction can be summarized as under:							
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">Transaction</th> <th style="width: 50%; text-align: center;">Consideration received in kind</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">Developer constructs and allots rehab flats to existing members</td> <td style="padding: 2px;">Development Potential (to be used for Saleable flats/ units)</td> </tr> <tr> <td style="padding: 2px;">Society sells development potential to the developer</td> <td style="padding: 2px;">Rehab flats for member</td> </tr> </tbody> </table>	Transaction	Consideration received in kind	Developer constructs and allots rehab flats to existing members	Development Potential (to be used for Saleable flats/ units)	Society sells development potential to the developer	Rehab flats for member	
Transaction	Consideration received in kind						
Developer constructs and allots rehab flats to existing members	Development Potential (to be used for Saleable flats/ units)						
Society sells development potential to the developer	Rehab flats for member						
➤ Developer is obliged to pay service tax <b>on value of the services</b> provided to society as stipulated under :							
<ul style="list-style-type: none"> <li>• Charging Section 66B of the Act</li> <li>• Value of the services to be determined U/s 67 of the Act read with Valuation Rules</li> </ul>							

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<b>REHAB FLATS/UNITS – VALUATION</b>														
➤ Gist of Valuation provisions [Section 67(1)] :														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Section</th> <th style="width: 35%;">Consideration</th> <th style="width: 50%;">Value</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">67(1)(i)</td> <td style="padding: 2px;">Received in money</td> <td style="padding: 2px;">Gross amount charged by service provider for such service</td> </tr> <tr> <td style="padding: 2px;">67(1)(ii)</td> <td style="padding: 2px;">Fully or party in kind - <b>Where value of consideration is ascertainable</b></td> <td style="padding: 2px;">Monetary value of such consideration</td> </tr> <tr> <td style="padding: 2px;">67(1)(iii)</td> <td style="padding: 2px;">Fully or party in kind - <b>Where value of consideration is not ascertainable</b></td> <td style="padding: 2px;">                     Prescribed manner i.e. as per Rule 3 of Valuations Rules                      (a) Gross amount charged by service provider for providing similar service in ordinary course of trade                      (b) Where value is not determinable as per (a), service provider to determine monetary value of consideration *                      *(which should not be less than cost of providing such service)                 </td> </tr> </tbody> </table>	Section	Consideration	Value	67(1)(i)	Received in money	Gross amount charged by service provider for such service	67(1)(ii)	Fully or party in kind - <b>Where value of consideration is ascertainable</b>	Monetary value of such consideration	67(1)(iii)	Fully or party in kind - <b>Where value of consideration is not ascertainable</b>	Prescribed manner i.e. as per Rule 3 of Valuations Rules (a) Gross amount charged by service provider for providing similar service in ordinary course of trade (b) Where value is not determinable as per (a), service provider to determine monetary value of consideration * *(which should not be less than cost of providing such service)		
Section	Consideration	Value												
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67(1)(iii)	Fully or party in kind - <b>Where value of consideration is not ascertainable</b>	Prescribed manner i.e. as per Rule 3 of Valuations Rules (a) Gross amount charged by service provider for providing similar service in ordinary course of trade (b) Where value is not determinable as per (a), service provider to determine monetary value of consideration * *(which should not be less than cost of providing such service)												

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**REHAB FLATS/UNITS – VALUATION**

- An erroneous notion prevails that Rehab flats are to be valued **U/s 67(1)(iii) read with Rule 3 of Valuation Rule**
- Accordingly following valuation methods are followed :
  - Rehab flats are valued at sales rate of saleable flats sold nearer to date of agreement with existing members
  - Ready Reckoner value of constructed flats
  - Construction cost of Rehab flats
- **Above valuation methods appear not to be in consonance with legal position:**
  - Section 67(1)(iii) and Valuation Rule are applicable only when value of consideration (development potential) is **unascertainable**.
  - Developer gets development potential as consideration and hence same is to be valued and not the Rehab flats
  - Development rights are liable to stamp duty on the market value as prescribed by state Government. Hence, value of consideration is **ascertainable**

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**REHAB FLATS/UNITS – VALUATION**

- In case of works contract, the land already belongs to society and it is not transferred by builder to the existing members of the society
- Reconstruction of society's building is a "works contract" and hence same cannot be valued at par with saleable flat which includes land value attributable to such flats
- Since value of development potential (consideration for rehab flats ) is ascertainable, Service to be valued **U/s 67(1)(ii)** of the Act and not U/s 67 (1)(iii) of the Act
- Value of development potential adopted / assessed for stamp duty purpose should be taken as monetary consideration for Rehab flats

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<b>REHAB FLATS/UNITS – VALUATION</b>											
➤ Developer provides “Works Contract service” to the society											
➤ Two methods of valuation of works contract service prescribed U/R 2A of Valuation Rules											
➤ <b>Specific valuation [Rule 2A(i)]:</b>											
• Value of service portion shall be gross amount of works contract less value of goods (material) transferred in execution of contract.											
• VAT / Sales Tax to be excluded from gross amount of works contract											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 70%; padding: 2px;">Gross Contract Value</td> <td style="width: 30%; text-align: center; padding: 2px;">A</td> </tr> <tr> <td style="padding: 2px;">(less) VAT / Sales tax</td> <td style="text-align: center; padding: 2px;">B</td> </tr> <tr> <td style="padding: 2px;">(less) value of goods</td> <td style="text-align: center; padding: 2px;">C</td> </tr> <tr> <td style="padding: 2px;"><b>Taxable Value</b></td> <td style="text-align: center; padding: 2px;"><b>D = (A – B – C)</b></td> </tr> <tr> <td colspan="2" style="padding: 2px;">Tax payable would be 12.36% of D</td> </tr> </tbody> </table>	Gross Contract Value	A	(less) VAT / Sales tax	B	(less) value of goods	C	<b>Taxable Value</b>	<b>D = (A – B – C)</b>	Tax payable would be 12.36% of D		
Gross Contract Value	A										
(less) VAT / Sales tax	B										
(less) value of goods	C										
<b>Taxable Value</b>	<b>D = (A – B – C)</b>										
Tax payable would be 12.36% of D											
• <b>What about deduction for value of land?</b>											
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<b>REHAB FLATS/UNITS – VALUATION</b>	
➤ <b>Presumptive valuation [Rule 2A(ii)]:</b>	
• Where value of service is not determined under specific valuation method, value of the service would be specified percentage of works contract value	
• Construction/ works contract is an “Original works” wherein 40% is presumed to be value of service portion	
• Effective tax rate under presumptive scheme is <b>4.944% of consideration for works contract</b> (i.e. 12.36% of 40%)	
• Even under presumptive scheme, the vat or sales tax to be excluded from gross contract value	
• <b>Whether land value can be excluded from total consideration for working out the value of the works contract?</b>	
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<b>REHAB FLATS/UNITS – VALUATION OF CONSIDERATION IN KIND</b>		
➤ <b>Valuation of consideration received in kind:</b>		
<b>Particulars</b>	<b>Rs.</b>	<b>Rs.</b>
Market Value of development rights assessed for the purpose of stamp duty		20,00,00,000
<b>Less : Paid to society/Existing members in cash:</b>		
a) Corpus/ consideration paid to society	1,00,00,000	
b) Corpus paid to members	75,00,000	
c) Rent allowance	1,50,00,000	
d) Shifting allowance	5,00,000	
e) Hardship allowance	30,00,000	
	<b>Consideration paid in cash</b>	<b>3,60,00,000</b>
	<b>Balance being consideration in kind</b>	<b>16,40,00,000</b>

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<b>REHAB FLATS/UNITS – PROBABLE SERVICE TAX WORKING</b>	
➤ <b>Service tax payable under specific valuation U/R 2A (i):</b>	
<b>Particulars</b>	<b>Rs.</b>
Value of development right ( <b>Gross value of works contract</b> )*	16,40,00,000
(less) value of material consumed for rehab flats/ units	(6,50,00,000)
<b>Service portion in execution of works contract</b>	<b>9,90,00,000</b>
Service tax payable @ 12.36% of Rs.9,90,00,000	<b>1,22,36,400</b>
<b>Developer is eligible to cenvat of input services and capital goods</b>	
➤ <b>Service tax payable under presumption scheme U/R 2A (ii) :</b>	
<b>Particulars</b>	<b>Rs.</b>
Value of development right ( <b>Gross value of works contract</b> )*	16,40,00,000
Service Portion in “works contract” – 40% of Rs.16,40,00,000	6,56,00,000
Service tax payable @ 12.36% of Rs.6,56,00,000	<b>81,08,160</b>
<b>Developer is eligible to cenvat of input services and capital goods</b>	
* Issue of deduction of development right (land cost) attributable to rehab portion for working out gross value of works contract is arguable	

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<b>REDEVELOPMENT PROJECT– SUMMARY OF SERVICE TAX IMPLICATIONS</b>	
➤ Developer to pay service tax on:	
<b>Particulars</b>	<b>Service tax payable</b>
<b>Saleable flats/ units / extra area:</b>	
a) Sale of under construction flats to outsiders	Premium flats - 3.708% Non- premium flats – 3.09%
b) Sale of extra area to existing members at concessional rates	Premium flats - 3.708% Non- premium flats – 3.09% on amount charged
c) Sale of flat after completion	No service tax
<b>Rehab flats/ units:</b>	
a) Flats to existing members	4.944% irrespective of premium or non-premium flats
b) Commercial units to existing members	4.944%
➤ Developer is entitled to Cenvat of following for entire project:	
<ul style="list-style-type: none"> <li>• Capital Goods</li> <li>• Input services</li> </ul>	
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<b>Words of Caution</b>
➤ Views expressed are the personal views of faculty based on his interpretation of law
➤ Application/implications of various provisions will vary on facts of the case and law prevailing on relevant time
➤ Contents of this presentation should not be construed as legal or professional advice
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**THANK YOU**

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