

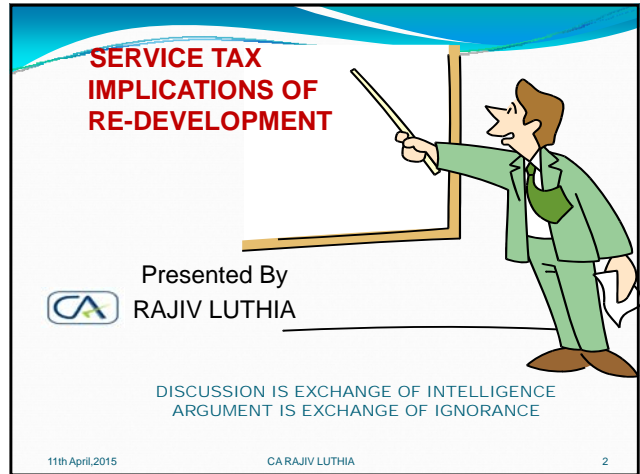


SEMINAR ON RE-DEVELOPMENT OF CO-OPERATIVE SOCIETIES

ORGANIZED BY
WIRC OF ICAI
At
Khimji Kunverji Vikamsey
Auditorium, ICAI Tower, BKC.

A candle loses nothing by lighting another candle.

Sunday, October 12, 2014 CARAJIV LUTHIA 1



SERVICE TAX IMPLICATIONS OF RE-DEVELOPMENT

Presented By
RAJIV LUTHIA

DISCUSSION IS EXCHANGE OF INTELLIGENCE
ARGUMENT IS EXCHANGE OF IGNORANCE

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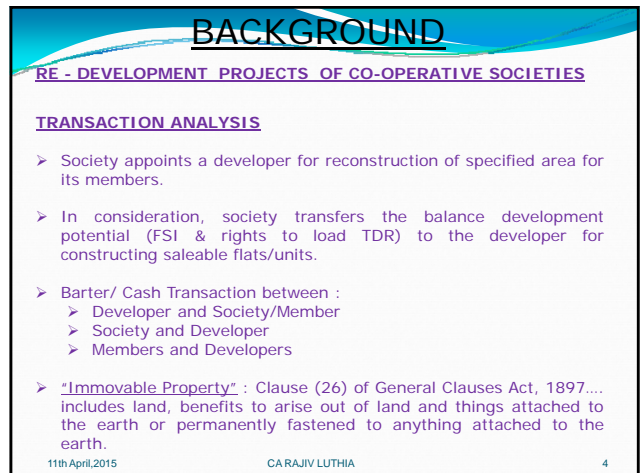
BACKGROUND

RE - DEVELOPMENT PROJECTS OF CO-OPERATIVE SOCIETIES

- Unique feature typical to real estate sector, especially in MUMBAI. Its an urban renewal process !!
- In normal course of redevelopment projects , 3 persons /parties are involved.
 - Developer
 - Society
 - Member
- Redevelopment is an exploitation by the developer of the development potential of an existing building/structure and the existing members get the reconstructed flats /units with modern amenities, additional area, corpus and other allowances.
- Win- Win Solution for Society, Members & the Developer.

REDEVELOPMENT

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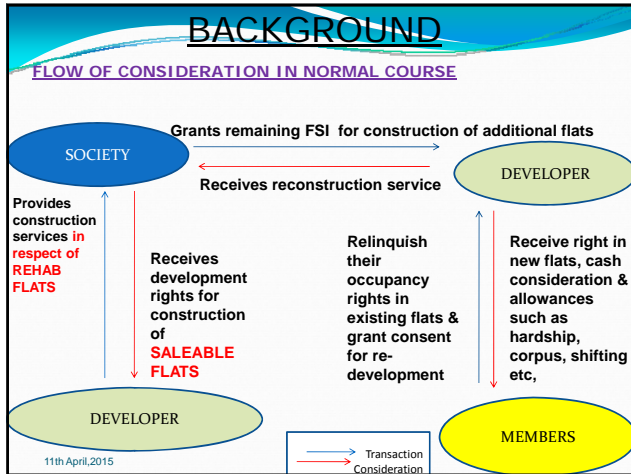
BACKGROUND

RE - DEVELOPMENT PROJECTS OF CO-OPERATIVE SOCIETIES

TRANSACTION ANALYSIS

- Society appoints a developer for reconstruction of specified area for its members.
- In consideration, society transfers the balance development potential (FSI & rights to load TDR) to the developer for constructing saleable flats/units.
- Barter/ Cash Transaction between :
 - Developer and Society/Member
 - Society and Developer
 - Members and Developers
- "Immovable Property" : Clause (26) of General Clauses Act, 1897.... includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

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SERVICE TAX APPLICABILITY ON RE-DEVELOPMENT

Service provider	Service Receiver	Nature of Service	Taxable or Not
Developer	Existing Members	Construct REHAB Flats	Works Contract Service
Developer	New members	Construction of Flat	Construction of Residential Complex Service
Society	Developer	Transfer of Development Right & FSI	Not Taxable - Transaction of Immovable Property
Member	Developer	Grant consent for re-development & Relinquishing of Right in existing flat	•Corpus allowance, rent, shifting allowance etc – as well as newly constructed flat Not Taxable

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POSITION PRIOR TO 1ST JULY, 2012

- Scope of commercial / residential construction services widened w.e.f 1st July, 2010, wherein the sale of commercial premises / residential complex by the builder or developer by the prospective buyer before obtaining completion certificate was also covered within the ambit of service tax.
- No service tax to be paid on any amount received by the builder/developer from the prospective buyer on or before 30th June, 2010 in respect of services provided or to be provided on or after 1st July, 2010Notification 36/2010

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POSITION PRIOR TO 1ST JULY, 2012

Construction of Residential Complex..... "PERSONAL USE"

Section 65(91a) defines "Residential Complex" means any complex comprising of-

1. a building or buildings, having more than 12 residential units;
2. a common area; and
3. any one or more facility or services such as park, lift, parking space, community hall, common water supply or affluent treatment system

located within a premises and the lay out of such premise 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 in any other person for designing or planning of lay out and the construction of such complex is intended for personal use as residence by such person.**

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POSITION PRIOR TO 1ST JULY, 2012...contd

Construction of Residential Complex..... "PERSONAL USE"

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

- "personal use" includes permitting the complex for use as residence by another person on rent or without consideration.
- "residential unit" means a single house or a single apartment intended for use as a place of residence.

➤ Clarification by CBEC vide Circular no. 151/2/2012 -ST dated 10th Feb., 2012 Re-construction undertaken by a building or society by directly engaging a builder/developer will not be chargeable to ST as it is meant for the personal use of the society / its members.

➤ NO Service Tax till 30th June, 2012 on Developers for construction of REHAB FLATS.

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POSITION

POST

1st JULY 2012



11th April 2015
Sunday, June 29, 2014


CONSTRUCTION SERVICE NOW A DECLARED SERVICE

- The Construction service is declared service under clause (b) of section 66 E
- 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.

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CONTD.....

- "competent authority" means the government or any authority authorized to issue completion certificate under law for the time being in force & in case of non requirement of such certificate from such authority, from any of the following:
 - architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
 - chartered engineer registered with the Institution of Engineers (India); or
 - licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- Completion certificate from engineer, architect or licensed surveyor would be treated as CC for the purpose of service tax only when there is exemption from obtaining CC in certain areas or certain types of building
- "Construction" includes additions, alterations, replacements or remodeling of any existing civil structure



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ABATEMENT POST 1st JULY 2012

- Notification No.26/2012-ST dated 20th June,2012 as amended by Notification No.2/2013-ST dated 1st March,2013 & Notification No.9/2013-ST dated 8th May,2013

Type of Service	Period	Abatement
Commercial Construction	Upto 28 th February, 2013	75%
	Post 1 st March,2013	70%
Residential Construction	Upto 28 th February, 2013	75%
	Post 1 st March,2013 upto 8 th May,2013	70% where Consideration equal to or more than 1 Crore AND area more than 2,000 Sq. Feet
	Post 9 th May,2013	70% where Consideration equal to or more than 1 Crore OR area equal to or more than 2,000 Sq. Feet

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ABATEMENT POST 1st JULY 2012...Contd

- Conditions for availing abatement
 - Value of land is included in the amount charged
 - No CENVAT availed for excise duty paid on inputs used....CENVAT available in respect of Capital Goods & Input Services.

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SERVICE

- Term defined u/s 65B 44
- Pre-requisition of service
 - 2 parties
 - Contract for activity
 - Consideration
 - includes declared service

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TRANSACTION OF CONSTRUCTION OF REHAB FLAT

- Service Provided by Developer to existing Member
 - It is Works Contract Service, since consideration for land is not charged by developer
 - Mumbai Commissionerate –I clarified vide letter F.No.V/ST-I/tech-II/463/11 dated 31st August,2012.....ST is leviable on construction of REHAB Flats
 - Developer gets consideration in form “DEVELOPMENT RIGHT”
 - ValuationSection 67(1)(ii)....Consideration is received fully or partly in kind , which is ascertainable
 - CBEC Circular 151/2/2012-ST dated 10th Feb.,2012 clarifiesvalue of REHAB flat is equivalent similar flats sold by developer.???????

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TRANSACTION OF CONSTRUCTION OF REHAB FLAT

- How similar value????? Consideration for Land never charged to existing members
- Hon'ble CHENNAI CESTAT in the case of Southern Properties and Promoters Vs. CCE (Coimbatore) 2015 (54) taxmann.com 116.....held that value of flat given to landowner towards consideration of land should be equivalent to similar flat sold to new buyers in view of section 67 & Determination of value rules.... Pre-deposit ordered.
- Ideally, Value should be equal to consideration for FSI paid by developer to the members/society Less other allowances such as corpus, hardship allowance, shifting allowance, brokerage etc.

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TRANSACTION OF CONSTRUCTION OF REHAB FLAT

- View prevalent in the industry that value should be taken as per Stamp Duty Ready Reckoner
- Taxable Value - 40% as per Rule 2A(ii) of Valuation Rules.

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TRANSACTION OF CONSTRUCTION OF REHAB FLAT

POINT OF TAXATION

- Rule 3 of POT
- Works Contract Service....continuous supply of service
- Consideration received in advance in the form of Development Right
- POT shall be date of receipt of advance, i.e. development right.

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SALE OF ADDITIONAL AREA TO EXISTING MEMBERS OR SALE OF NEW UNITS

- Transaction is taxable under "Construction of Complex Service"
- Abatement of 70% or 75% as the case may be
- Developer eligible for cenvat of input service and capital goods.

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TAXABILITY OF SERVICE PROVIDED BY EXISTING MEMBER

- Existing Members
 - relinquish their occupancy right in existing flat; and
 - grant consent for re-development
- Consideration by way of
 - Reconstructed flats
 - Hardship allowance, rent allowance, corpus, etc
- Possible viewthere is only 1 transaction i.e. sale of FSI/immovable propertynot liable to ST
- Alternatively, agreeing to tolerate an act....declared service...corpus etc may be taxable subject to threshold exemption in the hands of each member.

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Any questions ????????



WITH KNOWLEDGE WE KNOW THE WORDS,
BUT WITH EXPERIENCE WE KNOW THE MEANING

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Thanks



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