

WIRC of Institute of Chartered Accountants of India
National Conference on “Issues in Service Tax”

Subject: Taxation of Real Estate Transactions including Works Contract
Date : Saturday, 28th December 2013
Faculty: Advocate Shailesh Sheth



SCOPE OF PRESENTATION

The purpose of presentation is to enlighten the participants about the recent amendments made by the Finance Act, 2012 relating to “Service Tax” and their implications on the following sectors/ activities:

- Real Estate
- Infrastructure/ Contractors
- Works Contract
- Renting of Immovable Property

Position Of Builders/ Developers Till 30.06.2012

SERVICE TAX - POSITION TILL 30.06.2012

- Sale of completed flats / units is a property transaction and hence, not liable to Service tax
- Legislation deemed sale of under construction flats / units to be Service provided by builder to prospective buyers w.e.f. 01.07.2010
- Abatement of 75% is 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

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 30th 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?

Position Of Builders/ Developers on or after 1st July 2013

RELEVANT PROVISIONS - ON OR AFTER 01.07.2012

- 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)
 - 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

- 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

SERVICE TAX IMPLICATIONS - ON OR AFTER 01.07.2012

- Sale of under construction flats/units is **declared as Service** under Section 66E of the Act
- Definition of Service specifically **excludes** transfer of title in immovable property
- A strong view is prevalent that builders / developers transfer title in immovable property to buyer and hence transaction is not that of Service
- Old issue still remains, whether builder is:
 - Seller of property; or
 - Provider of service
- 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
- Presentation proceeds with the presumption that builders / developers are liable to Service tax

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|-----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------|
| Sale of flats/units where any part of sale consideration is received before issuance of completion certificate | Taxable - Declared Service | Taxable - Included in Definition |
| Sale of flats/units where entire sale consideration is received after issuance of completion certificate | Non-taxable | Non-taxable |
| Sale of single residential unit otherwise than as a part of a residential complex | Exempt - Clause 14(b) of Mega Exemption Notification | Non-taxable - Excluded from definition of Residential Complex |
| Sale of residential flats in building/complex having more than 1 unit but not more than 12 units | Taxable - No Specific exemption | Non-taxable - Excluded from definition of Residential Complex |
| Sale of residential flats in building/ complex having more than 12 units | Taxable | Taxable |

SERVICE TAX IMPLICATIONS - ON OR AFTER 01.07.2012

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|-----------------------------------------------------------------------------------|
| Re-sale of flats/units | Non-taxable | Non-taxable |
| Sale of Entire Building (having more than 12 units) under construction to a company meant for use of its employees as staff quarters. | Taxable - No Specific exemption | Non-taxable - Excluded from definition of Complex |
| Sale of under construction units for commercial purpose (irrespective of number of units in a complex) | Taxable - Declared Service | Taxable - Included in Definition |
| Sale of under construction units to Government | Exempt - Clause 12(a) of Mega Exemption Notification | Non-taxable - Building for non-commercial purpose was excluded from definition |

SERVICE TAX IMPLICATIONS - ON OR AFTER 01.07.2012

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-----------------------------------------------------------------------------------|
| Sale of residential unit pre-dominantly meant for employees of Government, MP, MLA etc | Exempt - Clause 12(f) of Mega Exemption Notification | Non-taxable - Excluded from definition of Complex |
| Sale of unauthorized / unapproved flats | Taxable | Non-Taxable - Only approved residential complex were taxable |
| Sale of under construction flats/units to entity registered under Sec 12AA of Income tax Act, 1961 and to be used by general public for religious purpose | Exempt - Under Clause 13(c) of Mega Exemption Notification | Non-taxable - Building for non-commercial purpose was excluded from definition |
| Sale of units to charitable trusts for educational / hospital / clinic etc | Taxable - No specific exemption | Non-taxable - Same as above |

- "Single residential unit" means a self-contained residential unit designed for residential use for one family
- "Residential complex" means any complex consisting of a building or buildings having more than one single residential unit

SERVICE TAX IMPLICATIONS - ON OR AFTER 01.07.2012

➤ **Notification No. 26/2012 dt 20.07.2012** notified changes in abatement

| Transaction | On or after 01.07.2012 | | Before 01.07.2012 | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|---------------|-------------------|----------------|
| | Taxable Value | Effective Tax | Taxable Value | Effective Tax |
| Sale of under construction flats/ units where any consideration is received before issuance of completion certificate <u>provided</u> value of land is included in consideration | | | | |
| | 25 | 3.09 | 25 25 | 2.575 3.09* |
| Cenvat availability of: | | | | |
| Inputs (such as cement, steel etc) | Not available | | Not available | |
| * From 01-01-2012 to 30-06-2012 Input Services (such as architect, contractor etc.) | Available | | Not available | |
| Capital Goods (such as machinery, equipment etc.) | Available | | Not available | |

SERVICE TAX IMPLICATIONS - ON OR AFTER 01.07.2012

➤ Notification No. 02/2013 dt. 01.03.2013 notified changes in abatement

| Particulars | Abatemen t | Taxable Position | Effective Rate | Conditions / Remark |
|--------------------------------------------------------------------------------------------------------------|---------------|---------------------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| i. Residential unit having carpet area upto 2000 sq. ft. or less irrespective of value of sale consideration | 75% | 25% | 3.09% | <ul style="list-style-type: none"> • No Cenvat for input • Sale value to include the land value • Cenvat available for input services • Cenvat available for capital goods |
| ii. Residential unit having consideration of less than Rs.1 Crore irrespective of area of the flat | 75% | 25% | 3.09% | |
| For other than above: | | | | |
| i. Residential unit having carpet area more than 2000 sq. ft. and consideration is Rs. 1 Crore or more | 70% | 30% | 3.708% | <ul style="list-style-type: none"> • Cenvat available for capital goods |
| ii. Commercial unit irrespective of area or value | 70% | 30% | 3.708% | |

EFFECTIVE TAX RATE FOR SALE OF UNDER CONSTRUCTION FLATS / UNITS - w.e.f. 08.05.2013

➤ **Notification No 09/2013 dt. 08.05.2013** notified changes in abatement

| Particulars | Abatement | Taxable Position | Effective Rate | Conditions / Remark |
|------------------------------------------------------------------------------------------------------------|-----------|------------------|----------------|------------------------------------------------------------------------------------------|
| Residential unit having carpet area upto 2000 sq. ft. or less and consideration is less than Rs. 1 Crore | 75% | 25% | 3.09% | <ul style="list-style-type: none"> • No Cenvat for input |
| For other than above: | | | | |
| i. Residential unit having carpet area more than 2000 sq. ft. irrespective of value of sales consideration | 70% | 30% | 3.708% | <ul style="list-style-type: none"> • Sale value to include the land value |
| ii. Residential unit having sales consideration of Rs.1 Crore or more irrespective of area of the flat | 70% | 30% | 3.708% | <ul style="list-style-type: none"> • Cenvat available for input services |
| iii. Commercial unit irrespective of area or sale value | 70% | 30% | 3.708% | <ul style="list-style-type: none"> • Cenvat available for capital goods |

BUILDERS / DEVELOPERS - SOME ISSUES

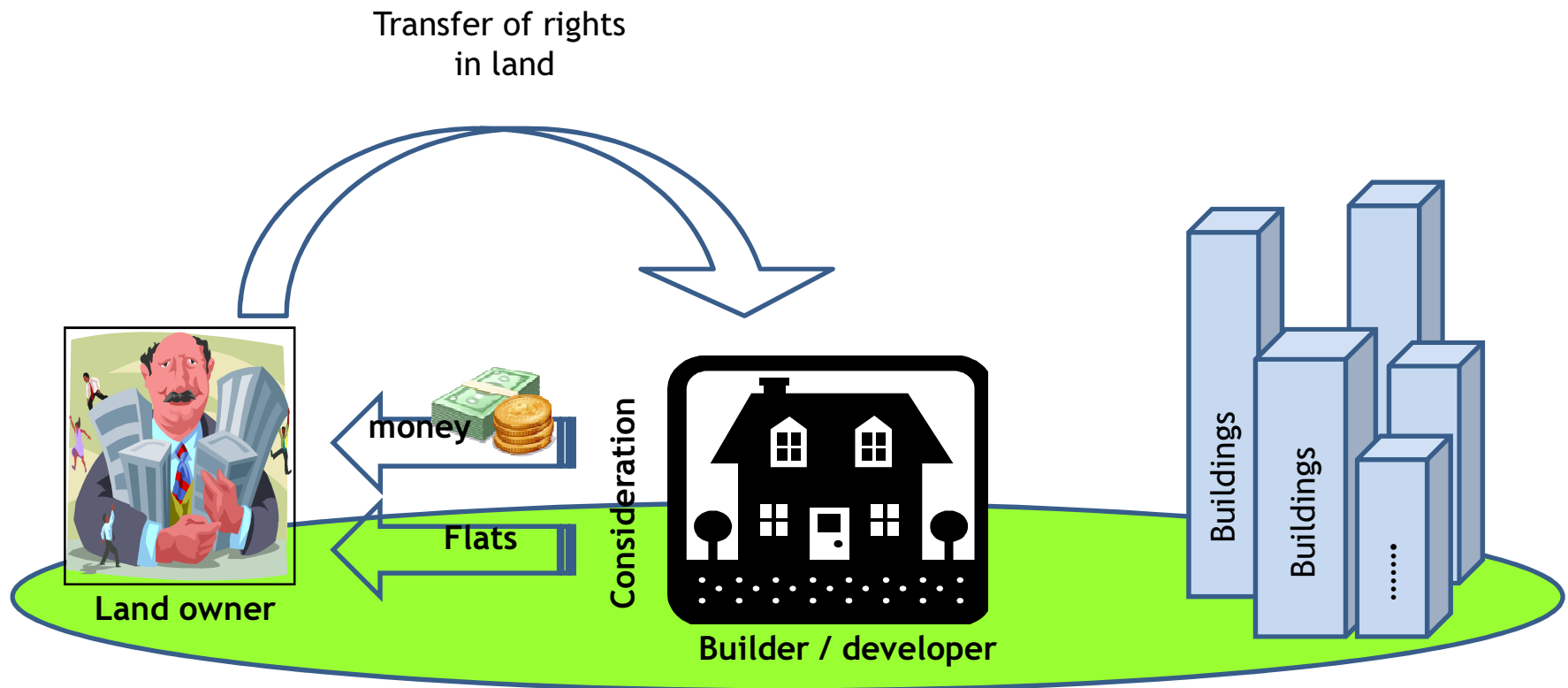
- Whether preferential location and floor rise charges are taxable at 12.36% or 3.09% ?
- Whether sale of following are liable to Service tax:

| Development right | FSI | TDR |
|----------------------------------------------------------------------------|-----|-----|
| Whether builder is liable to service tax in respect of flats allotted to : | | |

- Land Owner in lieu of land development rights.
 - Existing members of the society in redevelopment project.
 - Hutment occupants in case of SRA project.
- Whether land owner (getting the flats in lieu of sale of development rights) is liable to service tax in respect of such flats sold during construction by him?
 - Builder started construction of Residential complex having 10 units in 2011. Whether progress payments due on or after 01.07.2012 liable to tax?
 - Whether builder will have to reverse proportionate Cenvat relatable to sale of completed flats on which no Service tax is payable?
 - Whether completion certificate issued by an architect , Chartered engineer or license surveyor is still a valid certificate post 01.07.2012?

**Flats allotted to land owner
in consideration of land**

Flats allotted to land owner in consideration of land



Whether the flats allotted would be taxable under service tax?
If yes what would be the consideration?

Clarification by CBEC

Taxability

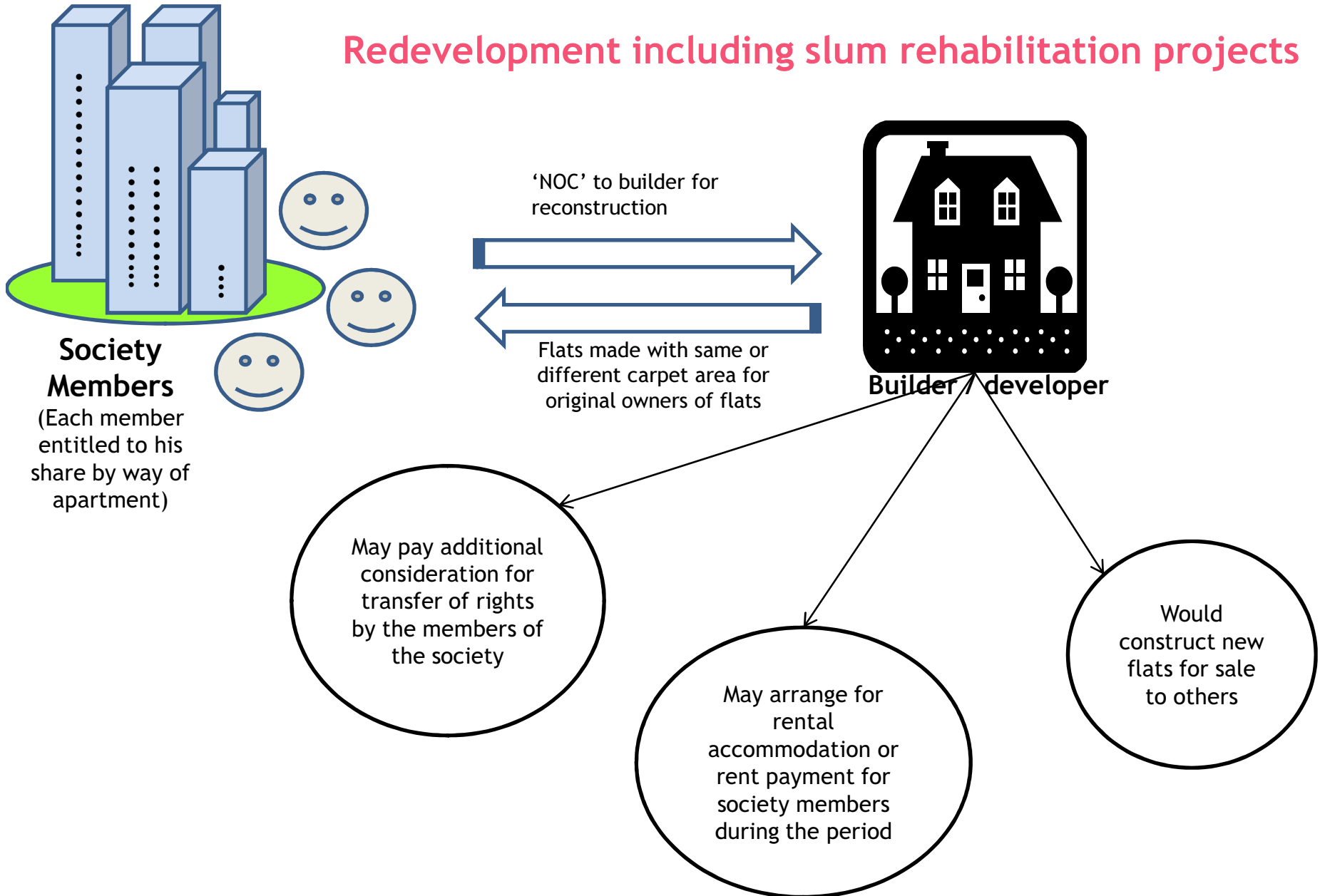
- Period after 1st July 2010 - service tax leviable
- Provided, even though part payment made or development rights transferred before issuance of completion certificate
- Flats given to landowner is treated as consideration and will be liable to tax

Valuation

- Flats given to landowner - value equivalent to similar flats sold to other customer
- Section 67(1)(iii) read with Rule 3(a) of Service Tax (Determination of Value) Rules, 2006 will be applicable
- In case of change in sale price, then flat sold to other party nearer to date of transfer of development rights should be considered for valuation
- The above rule would be applicable only if no consideration is determined.
- If cost of construction is defined, then it would become the Assessable Value.

Redevelopment Including Slum Rehabilitation Projects

Redevelopment including slum rehabilitation projects



Issues and Clarifications

Builder / Developer provides service to two categories of service recipient -

- members of society
- new purchasers of flats (if any)

Issues

1. When should service tax liability be attracted? and
2. What should be the value?

Clarification by CBEC (taxability)

Members of society: Not taxable as it is meant for personal use of the members/society. Post 1 July 2012, the same would be taxable since the condition of 'personal use' has been removed. Also clarified by Commissioner of Service Tax Mumbai vide Letter no. F. No. V/ST-I/Tech-II/463/11 dated 31 August 2012

New purchasers of flats: Chargeable to service tax post 1st July 2010, if payment received prior to date of issuance of Completion Certificate

Issues and Clarifications

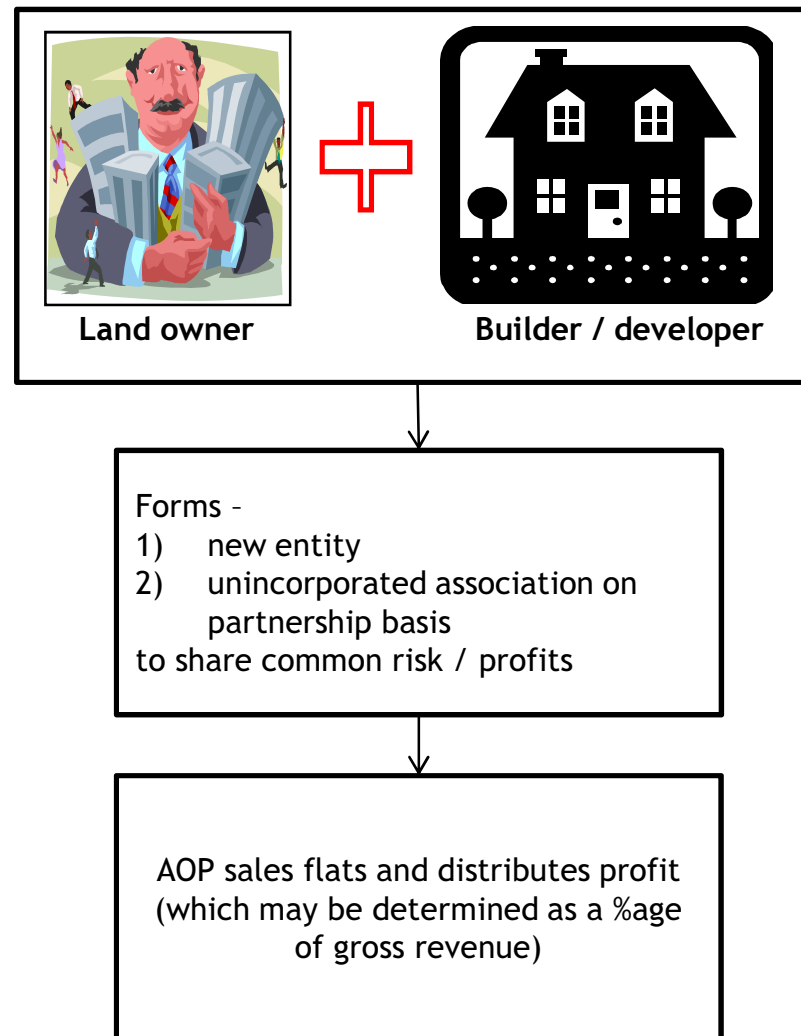
Clarification by CBEC (valuation)

New purchasers of flats: value to be determined as per Section 67(1)(i) of the Finance Act, 1994 i.e. the value will be 'gross amount charged' by the Builder/Developer for the said flats.

As far as other flat buyers are concerned the tax would be payable (after abatement) generally.

Joint Development Agreement On Sharing In an AOP - Model

Joint development agreement on sharing in AOP model



JDA on AOP model - Issues and clarifications

Issue

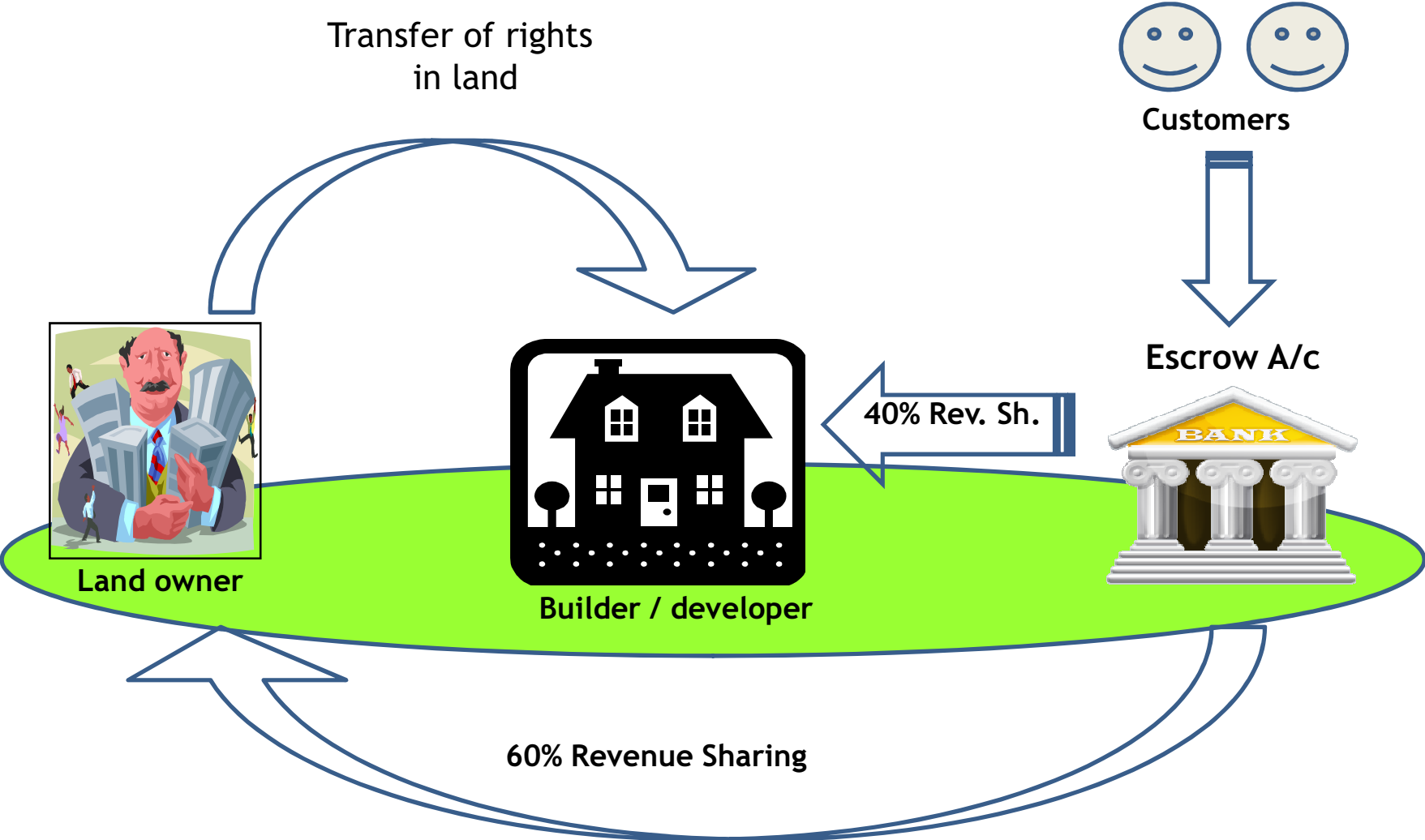
Whether construction service provided by new entity to landowner and Builder/Developer will be taxable?

Clarification by CBEC

This issue has been clarified earlier also in the Circular No. 148/17/2011-ST dated 13th December 2011 in specific paras 7, 8, & 9 of the said circular. In the said circular it was clarified that, when the distinct entity whether incorporated or not is formed by the two different persons / association to share a profit or risks of particular transactions then, the services provided by the said formed entity to its forming members is taxable. The said entity has distinct characteristics and existence in the eyes of the law. Therefore, in the present case association formed by the builder/developer and landowner jointly is liable to service tax on services provided to said builder/developer and landowner.

Joint Development Agreement On a principal to principal revenue sharing model

Land owner receives 60% of Gross Sale Proceeds as consideration for transfer of Development Rights



JDA on Revenue Sharing model - Issues and clarifications

- ❑ Clarification by CBEC as discussed earlier would apply only in case an “AOP” comes into existence.
- ❑ In case the agreement is merely to share revenue - the same is nothing but an agreement to pay the land lord variable consideration.
- ❑ Accordingly entire liability to pay tax on the consideration would be on the Developer.

Position Of Contractors/ Infrastructure
Projects
On Or After 1ST July, 2012

SERVICE TAX IMPLICATIONS FOR GOVERNMENT JOBS- PRE and POST 01.07.2012 (Clause 12 of mega exemption notification)

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|----------------------------------------------------------------------------------------------------------------|---------------------------|----------------------|
| Services provided to Government, local authority or Governmental authority by way of construction of: | Exempt | Non-taxable |
| (i) Civil structure / Original works for use other than commerce, industry or any other business or profession | Exempt | Non-taxable |
| (ii) Historical monuments / archeological site | Exempt | Non-taxable |
| (iii) Structure predominantly for educational, clinical, art or cultural establishment | Exempt | Non-taxable |
| (iv) Canal, dam or other irrigation works | Exempt | Non-taxable |
| (v) Pipeline, conduit or plant for water supply, water treatment, sewerage treatment/disposal | Exempt | Litigative issue |
| (vi) Residential complex predominantly for its employees, MP, MLA etc | Exempt | Non-taxable |

**SERVICE TAX IMPLICATIONS FOR GOVERNMENT JOBS- PRE and POST
01.07.2012 (Clause 12 of mega exemption notification)**

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------|
| (vii) By way of erection, commissioning, installation, completion, fitting out, repair, maintenance,, renovation or alteration of all the above | Exempt | Litigative issue |
| All above services to Government for commerce, industry or for any other business or profession (for example - construction of warehouse, industrial units etc. for sale) | Taxable | Taxable |
| ➤ Retrospective exemption granted for Management, Maintenance or repair services during the period 16.06.2005 to 26.07.2009 in respect of non-commercial government buildings | | |
| ➤ Service provider entitled to claim refund of such tax within 6 months from 28.05.2012 (enactment date) | | |

SERVICE TAX IMPLICATIONS FOR GOVERNMENT JOBS- PRE and POST 01.07.2012 (Clause 13 of mega exemption notification)

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|--------------------------------------------------------------------------|--------------------------------------------------|-------------------------------------|
| Services provided to any person by way of construction of: | Exempt , if for general public use | Non-taxable even if for private use |
| (i) Road | | |
| (ii) Bridge | Exempt , if for general public use | Non-taxable even if for private use |
| (iii) Tunnel | Exempt , if for general public use | Non-taxable even if for private use |
| (iv) Road transport terminal | Exempt , if for general public use | Non-taxable even if for private use |
| (v) Civil structure or original works under JNNURM or RAY | Exempt | Non-taxable |

**SERVICE TAX IMPLICATIONS FOR GOVERNMENT JOBS- PRE and POST
01.07.2012 (Clause 13 of mega exemption notification)**

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|-------------------|
| (vi) Building owned by a entity registered under Sec 12AA of Income tax Act, 1961 and to be used by general public for religious purpose | Exempt , if for general public use | Non-taxable |
| (vii) Construction/Erection of pollution control or effluent treatment plant (other than as a part of factory) | Exempt | Taxable |
| (viii) Construction/Erection of structure meant for funeral, burial or cremation | Exempt | Non-taxable |

SERVICE TAX IMPLICATIONS FOR GOVERNMENT JOBS- PRE and POST 01.07.2012 (Clause 13 of mega exemption notification)

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|-----------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------|
| Repair, renovation, commissioning, installation, completion, fitting out, maintenance, or alteration of all the above | Exempt | Litigative issue |
| Construction of hospital, educational institutions such as schools, colleges, etc by charitable trusts or NGO's | Taxable | Non-taxable |

- Retrospective exemption granted for Management, Maintenance or repair services during the period 16.06.2005 to 26.07.2009 in respect of non-commercial government buildings
- Service provider entitled to claim refund of such tax within 6 months from 28.05.2012 (enactment date)

**SERVICE TAX IMPLICATIONS FOR GOVERNMENT JOBS- PRE and POST
01.07.2012 (Clause 14 of mega exemption notification)**

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|-----------------------------------------------------------------------------------------------------|---------------------------|---------------------------------------------------------------------------------------------------------|
| Services provided to any person by way of construction, erection, commissioning or installation of: | Exempt | Non-taxable in case of works contract . Labour contract for Erection, commissioning etc was taxable. |
| (i) Airport | | |
| (ii) Port | Exempt | |
| (iii) Railway, including monorail or metro | Exempt | |
| (iv) Single residential unit otherwise than as a part of residential complex | Exempt | Non-taxable |
| (v) Low cost houses in approved housing projects upto a carpet area of 60 square meters per house | Exempt | No specific exemption |
| (vi) post-harvest storage infrastructure for agricultural produce including a cold storage | Exempt | Exempt by Notification |

SERVICE TAX IMPLICATIONS FOR GOVERNMENT JOBS- PRE and POST 01.07.2012 (Clause 14 of mega exemption notification)

| Transaction | On or after 01.07.2012 | Before 01.07.2012 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------|
| (vii) Mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages | Exempt | Exempt by Notification |
| Repair, maintenance, alteration, renovation etc of all above items | Taxable | Litigative issue |

TAXABILITY OF SUB-CONTRACTORS

- Sub-contractors are independent assesseees liable to Service tax. Merely main contractor or builder pays Service tax, sub-contractor is not automatically exempted
- Clause 29(h) of Mega exemption Notification No 25/2012-ST dated 20.06.2012 provides for exemption to sub-contractor providing:
 - works contract services
 - to main contractor providing exempt Works Contract services
- Sub-contractor providing labour services (other than works contract services) is **not entitled** to above referred exemption
- Pre-amendment, sub-contractor was entitled to such exemption in respect of works contract services and labour contract services also

Contractors/ sub contractors- issues

- Contactor commenced construction of charitable hospital in 2011. Whether progress payments due on or after 01.07.2012 liable to tax?
- Exemption notification no.13 allows an exemption in respect of civil structures which are meant for use of general public. In absence of definition of general public, what meaning should be assigned to this term?
- Whether sub contractor is entitled to exemption for providing works contract and/or labour contract service to main contractor in respect of following :
 - Construction of civil structure in SEZ/for SEZ developers
 - Construction of civil structure in respect of government building which is exempt under clause 12 of mega exemption notification.
 - Infrastructure projects such as road, bridge, temple, airport etc which are exempt under clause 13 and 14 of mega exemption notification.

Works Contract Service

W.E.F. 01.07.2012

MEANING OF WORKS CONTRACT

- Works contract service means [Section 65B (54)] :
 - Contract involving transfer of goods in execution of such contract
 - such transfer of goods is leviable to tax as sale of goods; and
 - such contract is for carrying out:

| | | | |
|------------------------------------------|------------------------------------------------------------|------------------------|--------------|
| Construction | Erection | Commissioning | Installation |
| Completion of / in respect | Fitting out of movable or immovable property | Repair | Maintenance |
| Alteration | Renovation | Other similar activity | |

- Prior to 01/07/2012, works contract meant works contract in respect of immovable property
- Now it includes works contract in respect of goods / movable property also

WORKS CONTRACT - Categories

- “Original work” means [Explanation 1 to Rule 2A (ii)]:
 - all new constructions
 - all types of additions and alteration to abandoned / damage structures on land that are required to make them workable
 - Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise
 - Category A
- Works contract for maintenance, repair, reconditioning, restoration or servicing of goods is separately distinguished from “original work” and “other works”
 - Category B
- “Other works” means:
 - Works contract other than original work (Category A) or falling in Category B
 - It includes maintenance, repairs , completion and finishing services such as glazing, plastering, floor and wall tiling, electrical fittings of an immovable property
- Service provider is entitled to Cenvat of input services and capital goods irrespective of valuation method / scheme adopted.
- Service provider is not entitled to Cenvat of inputs.

VALUATION OF WORKS CONTRACT SERVICE - W.E.F. 01.07.2012

- Pre 01.07.2012, Assessee had a choice of working out specific value of Services under Rule 2A of Valuation Rules or under Composition Scheme
- The composition scheme is withdrawn w.e.f. 01.07.2012 and Rule 2A has been revised
- Revised Rule 2A of Valuation Rules :
 - 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.
 - Where vat/sales tax has been paid or payable on actual value of goods transferred in execution of contract, such value should be taken for determining value of service portion.

| | |
|----------------------------------|-------------------------------------|
| Gross Contract Value | A |
| (less) VAT / Sales tax | B |
| (less) value of goods | C |
| Taxable Value | $D = (A - B - C)$ |
| Tax payable would be 12.36% of D | |

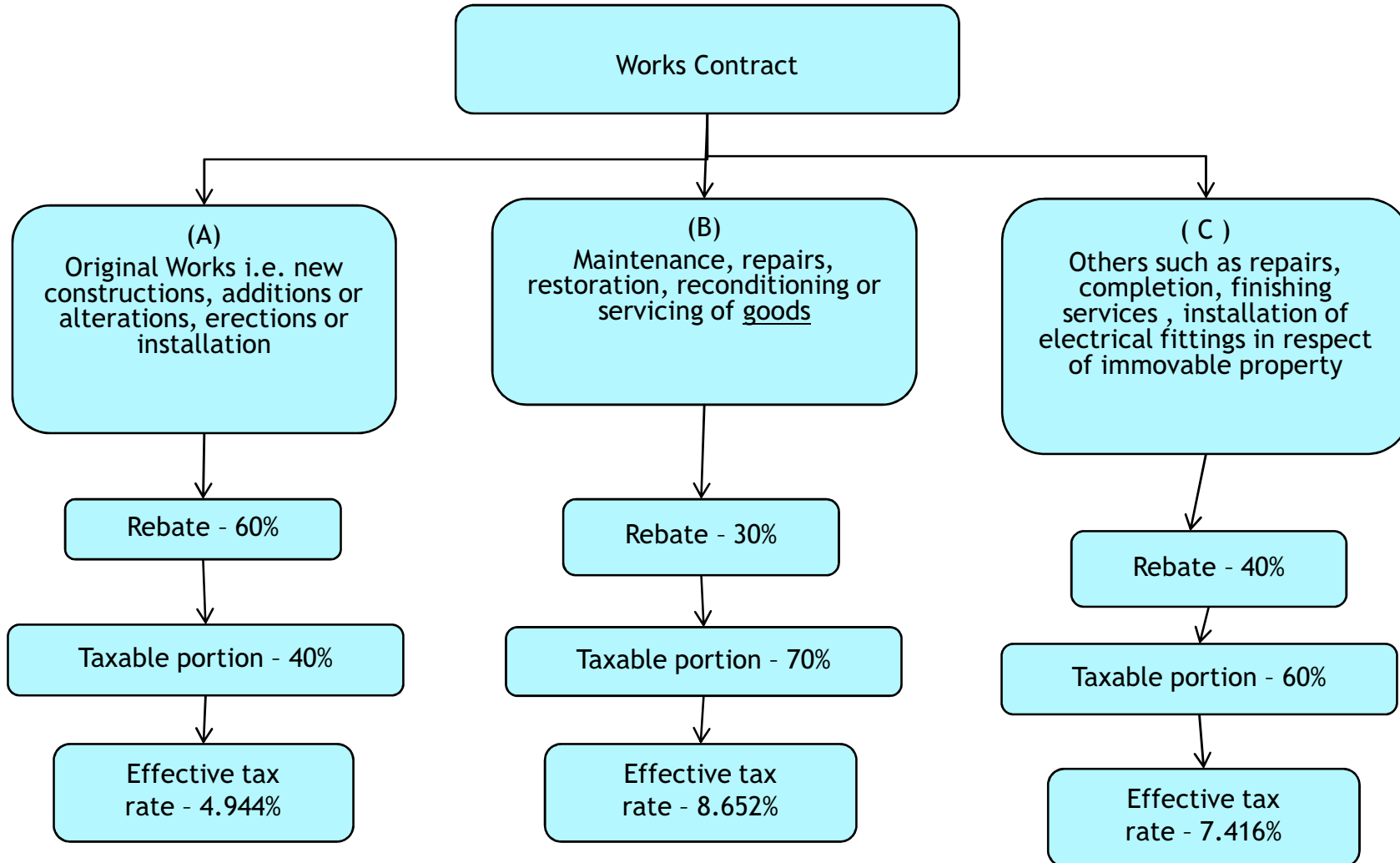
VALUATION OF WORKS CONTRACT SERVICE - W.E.F. 01.07.2012

- Value of service should include following specified overheads :

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| Labour / service charges paid | Sub-contractor charges |
| Planning, designing, architect fees | Tools / machinery hire charges |
| Water, electricity, fuel, consumables | Establishment cost |
| Expenses relatable to services | Profit relatable to services |
| <ul style="list-style-type: none"> Where value of service is not determined as above, value of the service would be specified percentage of contract value (presumptive Scheme) [Refer Slide No. 31] | |
| Labour / service charges paid | Sub-contractor charges |

- Even for presumptive scheme, the vat or sales tax to be excluded from gross contract value. Service provider is entitled to Cenvat of input services and capital goods irrespective of valuation method / scheme adopted
- Service provider is not entitled to Cenvat of inputs

WORKS CONTRACT - PRESUMPTIVE VALUATION W.E.F. 01.07.2012



*Service provider is entitled to Cenvat of Input services and capital goods

WORKS CONTRACT - Inclusion of Material / Service Value

- Rule 2A (ii) (D) - “total amount” for presumptive taxation :

| Particulars | Calculation |
|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Gross Amount Charged for Works Contract | A |
| Add : Fair Market Value of All Goods Supplied in or in relation to execution of works contract (Under same contract or separate contract) | B |
| Add : Fair Market Value of All Services Supplied in or in relation to execution of works contract (Under same contract or separate contract) | C |
| Less: Amount Charged for above goods / services | D |
| Less: VAT / Sales Tax levied thereon | E |
| ➤ Fair Market Value of Goods and services so supplied may be determined in accordance with Normally accepted accounting principles? | Normally accepted |
| Total Amount on which tax to be worked out (A+B+C-D-E) | F |
| Tax at presumptive rate on F | |

Applicability of Reverse Charge Mechanism

Reverse charge mechanism is applicable w.e.f. 01.07.2012 when

| Nature of Service | Service provider | Service recipient | Liability of Service Provider | Liability of Service Receiver |
|-----------------------|--------------------------------------------|---------------------------------------------------------------------------|-------------------------------|-------------------------------|
| Works Contract | Individual/H UF or Partnership Firm or AOP | Business entity registered as body corporate located in taxable territory | 50% | 50% |
| Original Work | | | (2.472%) | (2.472%) |
| Repair / AMC of goods | | | (4.326%) | (4.326%) |
| Other Work | | | (3.708%) | (3.708%) |

WORKS CONTRACT - SOME ISSUES

- Whether all Works Contract under VAT are Works Contract under Service Tax ?
- In case where contractor has paid vat on actual basis, whether he is entitled to presumptive valuation for service tax?
- In case where contractor pays VAT under composition scheme (Where value of material is not declared for VAT purpose), whether contractor is obliged to follow presumptive scheme of valuation or he can follow specific valuation?
- What will be the applicable rate of Service tax in respect of following finishing and completion contracts for new construction:

| | | |
|----------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------------------------|
| ➤ Plastering <small>Whether site formation and clearance</small> | Tiling <small>contractor can charge Service tax</small> | Painting <small>Claiming rebate for new constructions?</small> |
| ➤ Electrical <small>Contractors as to inclusion of</small> | Plumbing <small>material supplied by client or</small> | Carpentry <small>material supplied at concessional value</small> |

- Overlapping of VAT and service tax on certain contracts

WORKS CONTRACT - SOME ISSUES

- Whether Service tax paid under reverse charge mechanism is to be treated as value of services and consequently service recipient (builder/contractor) is obliged to deduct income tax at source (TDS) on such service tax paid under reverse charge?
- In case where the works contract is allotted on 'inclusive of service tax' basis, whether service recipient is liable to pay service tax under reverse charge mechanism on such work contract?
- Whether service recipient (builder/contractor) can discharge service tax liability under reverse charge mechanism from accumulated Cenvat balance?
- Whether service provider (contractor or sub - contractor) discharging partial service tax liability is entitled to refund of Cenvat balance built up due to lower output tax liability and entitlement to full Cenvat?
- If Service provider (contractor) does not discharge his portion of tax liability under partial reverse charge mechanism, whether full tax can be recovered from service recipient (builder)?

Thank You