

F.No.332/16/2010-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit
New Delhi

Dated: 24, May 2010

Subject: Leviability of service tax on construction of residential houses by National Building Construction Corporation Limited (NBCC) for Central Government officers-regarding

Please refer to your letter No, E.D. (F)/Service Tax/2010 dated 20th May, 2010 seeking clarification on the above subject.

2. The matter has been examined. The activity of building new residential complexes falls within the definition of taxable service, namely, 'Construction of Complexes'. Normally, the type of complex proposed to be built by NBCC falls within the definition of residential complexes. However, as per definition, the residential complex (for service tax purposes) does not include a complex which is constructed by a person directly engaging any other person for designing/planning/construction and is intended for personal use as residence by such person. The definition also explains that personal use includes promoting use of such property as residence by another person on rent or even without consideration.

3. As per the information provided in your letter and during discussions, the Ministry of Urban Development (GOI) has directly engaged the NBCC for constructing residential complex for central government officers. Further, the residential complexes so built are intended for the personal use of the GOI which includes promoting the use of complex as residence by other persons (i.e. the Government officers or the Ministers). As such the GOI is the service receiver and NBCC is providing services directly to the GOI for its personal use. Therefore, as for the instant arrangement between Ministry of Urban Development and NBCC is concerned, the service tax is not leviable. It may, however, be pointed out that if the NBCC, being a party to a direct contract with GOI, engages a sub-contractor for carrying out the whole or part of the construction, then the sub-contractor would be liable to pay service tax as in that case, NBCC would be the service receiver and the construction would not be for their personal use.

(Gautam Bhattacharya)
Joint Secretary (TRU-II)