

The issue of levy of service tax on construction of residential complex is as sticky and murky as the cement and concrete and this budget has added further to it.

There are broadly two types of transactions involving residential complex.

a) Pure sale model. An initial agreement to sell a future property would be followed by stage wise receipt of payments and after completion, the property will be registered in the name of the buyer, through a sale deed. As clarified in the CBEC's Circular NO. 108, this is a case of self service and there is no service tax. But this clarification has been done away with, in the present budget, by insertion of the following Explanation.

Explanation : For the purposes of this sub-clause, construction of a complex, which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer.

So a transaction of sale, is going to be deemed as a service and such service would attract the levy of service tax, if any amount is received from the buyers, before obtaining completion certificate (No builder would be so imprudent not to receive any money from the buyers, till he gets completion certificate).

b) Service model. Under this model, the Undivided portion of the land (UDS) would first be sold to the buyer and a construction agreement would be entered into to undertake construction in the UDS. The buyer in this case is getting a residential unit constructed for his personal use. Construction of a residential complex, by a person for his personal use is excluded from the ambit of the levy and construction of complex is defined to include construction of a part of the complex also. Based on this legal position only, it has been further clarified in the same Circular 108, that no service tax is payable.

Even the newly introduced Explanation would not alter this situation, as the said Explanation is applicable only under the sale model and not under the service model of transactions.

Now, by Notification 29/2010 Dt. 22.06.2010, an abatement of 75 % has been prescribed for construction services (both commercial and residential), if the land value is also included in the gross value. The existing abatement of 67 % would apply on gross value excluding land value but an enhanced abatement of 75 % would apply, if land value is also included. But the moot question as to how an exemption notification issued under service tax, include the value of a transaction in immovable property as value of taxable service.

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