

Service Tax On Works Contract



What is Service?



“Service”
means

Any Activity

Carried out by a person

For another person

For consideration

and includes a declared
service

Service Excludes

a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

such transfer , delivery or supply of goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

A transaction in money or actionable claim

a provision of service by an employee to the employer in the course of or in relation to his employment

fees taken in any court or tribunal established under any law for the time being in force.

Concepts Covered

WORKS CONTRACT SERVICES –
TAXABILITY - FAQs

CONSTRUCTIONS SERVICES – BOOT PROJECTS ,
TBM, RECPNSTRUCTION MPODELS - TAXABILITY

DECLARED SERVICES [SECTION 66E]

Sec 66E (b) – Construction Service

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.

Section 66E (h)- Works Contract services

“works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

FAQs ON WCS

- ❑ Whether Annual Maintenance Contracts are Works Contract Services?
 - Yes, if materials are involved.
 - Since the definition covers both movable and immovable property.

- ❑ Whether labour contracts for building or structures are Works Contract Services?
 - No.
 - No transfer of property in goods.
 - Pure Labour contracts are not Works Contract Services.

- ❑ Whether repairs and Maintenance of motor vehicle is Works Contract Service?
 - Yes, if materials are involved.

- ❑ Whether completion & finishing services w.r.t new construction shall be construed as original works?
 - Yes.
 - It is eligible as original works as without it new construction cannot be said to be completed.

- ❑ Is Composition Scheme always beneficial?
 - No.
 - In case of Erection & Commissioning projects where the value of goods is huge
 - Its better to go with Specific Value Method.

- ❑ Can I adopt different valuation methods for different contracts?
 - Yes.
 - No restriction under valuation rules.

- ❑ Can I opt composition scheme in VAT & non-composition scheme in Service Tax or non-composition scheme in VAT & composition scheme in Service Tax?
 - Yes
 - Rule 2A nowhere states that service providers who pays VAT on actual value of materials is oblige to follow Specific Value Method.

VALUATION

Method-1

Pay ST on service portion - Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006

Gross amount charged	XXX
Value of transfer of property in goods (Excluding VAT)	<u>XXX</u>
Amount on Service portion	XXX

Method-2

Composition/
Abatement
scheme

Original Works

AV= 40% of
total amount
charged

Other works
(Repair,
maintainance,etc)

AV= 70% OF
total amount
charged is
assessable
value

Services to Government

Services from any person to the Government (including local authority) by way of Construction, Erection, Commissioning, Installation, Fitting out, Repair, Maintenance, Renovation, Alteration is **Exempt**.

Examples

Civil Structure/ other original works predominantly used other than for:

- 1) Commerce
- 2) Industry
- 3) Business/Professional

W.e.f 1.4.15 ex
withdrawn and
w.e.f.1.3.16
reincorporated



Cont...

Historical
Monuments etc.



A structure for educational,
clinical, art or cultural
establishment W.e.f 1.4.15 ex
withdrawn and w.e.f.1.3.16
reincorporated



Canal & any irrigation
works, pipeline conduit
for Water Supply, Water
Treatment, Sewage
Treatment



Residential complex
for self-use or by their
employees W.e.f 1.4.15 ex
withdrawn and w.e.f.1.3.16
reincorporated

Construction of Roads, Bridges, etc

The services provided to any person or person registered under sec 12AA for construction, erection etc of the following is exempt from taxability.

1) Roads, bridges, tunnels or terminals used by general public

2) Building owned by Section 12AA entity for religious use by general public

3) Pollution control or effluent treatment plant except as a part of factory

4) Structure meant for funeral, burial or cremation of deceased

Constructions exempted from Service Tax

Airport, Ports,
Railways,
Monorail, Metro.
Metro now
taxable



Single residential
unit except as a
part of residential
complex



Cold Storages



Repairs and maintenance are not covered above
thus it is taxable

Taxability on Sub-Contractors

□ If Works contract service from the main contractor is exempt

□ Whether sub-contractor who is providing services to such main contractor also exempt?

- Sl. No. 29(h) of Notification No. 25/2012 – ST (MEN) states that “*sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt*”

* Thus if sub contractor provides any service other than works contract service, then they are all taxable

Place of Provision of Construction Service

*** Place of provision for construction service shall be the place where the immovable property is situated**

Treatment of goods or material supplied by customer to service provider

Where the goods are supplied by the contractee at free of cost the same shall be included in the gross amount not charged and the tax shall be levied thereon – In case the assessee opts for the composition scheme;

However the larger bench of CESTAT Delhi in the Bhayana Builders Pvt Ltd held that the value of the free supply of materials shall not be included as cited above

Built own operate and Transfer

Government

T-1

Grants the right to use/develop a land/property

Concessionaire

Provision of Service

T-3

T-2

If independent contractor is engaged

End-user

Contractor

Built own operate and Transfer

☐ T-1 : Transaction between Government and Concessionaire

- granting the right to use/ develop a land/property to the concessionaire involves a service, then government is the service provider and is liable to pay service tax.

☐ T-2 : Transaction between Concessionaire and Contractor

- If an independent contractor is engaged for construction, then the contractor is the service provider and is liable to pay the service tax. On the other hand if construction is undertaken by concessionaire himself it amounts to self service and not taxable.

Built own operate and Transfer

- **T3 : Transaction between Concessionaire and End-user**
 - If the concessionaire allowing the end-user to use the developed property on rental basis, amounts to service then the concessionaire is the service provider and is liable to pay service tax.

Tripartite Model of Development

Joint Development model of undertaking housing and commercial projects are widely popular because of the reason that no up front huge investments are required for acquiring lands

No cash outflows are involved in this model as a portion of the built up area is exchanged in consideration for the transfer of development rights in land.

Tripartite Model of Development

❑ **Applicability of service tax on JDAs:**

❑ Under the negative list regime, Section 66E (b) – declared services, specifically covers services provided by way of construction of complex.

❑ Construction services provided by the builder/developer is taxable in case any part of the payment/development rights was received by the builder/developer before the issuance of the completion certificate and the service tax would be required to be paid by the builder/developer even for the flats given to the land owner.

Tripartite Model of Development

☐ Valuation of Construction Services in lieu of Development rights:

- The builder receives development rights over the land from the land lord
- In consideration of which a portion of the built up area is transferred to the land lord.
- From the service provider perspective the value of the land given for development is consideration.

Tripartite Model of Development

What is the value on which the builder should charge service tax from the land owner?

The builder has 2 options as below:

1) Follow circular dated 10.02.2012 (prior to negative list regime)

2) Follow Service Education Tax Guide dated 20.06.2012 (on introduction of negative list regime)

Cont...

CBEC circular issued no.151/2/2012 dated Feb 10,2012 states that- the value of these flats would be equal to the value of similar flats charged by the builders/developers from the second category of service receiver i.e., outside buyers.

The Education Guide issued by the CBEC on 20.06.2012 states- the value of flats given to first category of service receiver (land owner) will be the value of land when the same is transferred and the point of taxation also be determined accordingly

NOTE: There is a ambiguity whether it is the value of the flats or value of the land that is to be adopted, thus one may go for Education Guide as it was introduced in context to negative list

Tripartite Model of Development

Value of land given -at what point of time?

- Service tax is chargeable on the consideration received for providing service.
- That is purely based on the benefit received by service provider.
- In JDA agreements the benefit derived by the service provider(builder) is nothing but the value of the land as existing at point of development.
- this value cannot be compared with the benefit ultimately received by the land owner upon completion of project

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In case of JDAs consideration is said to be received in advance i.e., the moment the land is available to the builder

Therefore the value of the land at the time when it is made available to the builder shall be adopted.

Tripartite Model of Development

How to arrive at the value???

At the time of entering the JDA two values shall be available

1) Market value

2) Stamp duty value

Generally the stamp duty value shall be less than the market value

In such a case the agreement entered between the land owner and the builder shall be referred and thus the value adopted for the service tax shall not be less than the value of land agreed upon in the agreement

Tripartite Model of Development

Taxation of Flats being sold by Land Owner:

- Under the negative list regime even the land owner is required to pay service tax with respect to his share of residential units when he ultimately transfers the same to customers except in cases where entire sale proceeds are received after obtaining completion certificate.
- The service tax paid by him to builder is eligible as cenvat credit.

In view of the above anomaly tax authorities have to consider this issue on top priority and come out with easy to comply valuation mechanism.

RE-DEVELOPMENT MODEL

Reconstruction Model

- Where the land is owned by a society with each member entitled to his share by way of an apartment.
- Society or individual flat owners give no objection certificate to the builder for construction.
- The builder makes new flat with same or different carpet areas for original owners of flats.
- Construct additional flats for sale to others.
- And or pay additional amount to the owners of original flats.

RE-DEVELOPMENT MODEL

Taxation

- Under this model, there are two categories of service receivers
 - First category being, Original flat owners
 - Second Category consists of buyers of flats other than society members – outside buyers.
- As far the second category of service receivers are concerned, the builder is liable to pay service tax in the usual manner.
- However, with respect to the first category of service receivers, the **CBEC Circular of 2012** categorically states the builder is not liable to pay service tax .

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RE-DEVELOPMENT MODEL

❑ This is because under the old regime construction of complex for **personal use is specifically excluded** from levy

• However, in the Negative List Regime, exemption is provided only with respect to residential complex services in the case of a single residential unit other than as part of a complex or building

• Exemption is provided only if it is a single residential unit, personal use not covered here, hence taxable.

❑ Consequently, the service tax education guide states that in all cases of re construction models service tax would be levied.

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