

**TRADE FACILITY NO. 1/2011**

**Sub:- The liability of Service Tax under the category "Construction of Complex Services"- Clarification- Regarding**

"Construction of Complex Services" is defined as:-

Section 65(105)(zzzh) of the Act defines the taxable service as 'any service provided or to be provided to any person, by any other person' in relation to construction of complex'.

2. With effect from 01.07.2010 (the Finance Act, 2010), an explanation has been inserted below sub clause (zzzh) of section 65 (105) to clarify that unless the entire consideration for the property is paid after the completion of construction (i.e. after issuance of completion certificate by the competent authority), the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer and the service tax would be charged accordingly.

3. The explanation reads as under-

"Explanation- For the purpose of this 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 authorized 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".

4. Representations have been received from trade requesting clarification particularly for advance payments for services of Construction of Residential Complex rendered after 01.07.2010 and also for service tax collected by builders even where no liability exists. It is hereby clarified that-

- (a) Where services of construction of Residential Complex were rendered prior to 01.07.2010 no Service Tax is leviable in terms of para 3 of Boards Circular number 108/02/2009-ST dated 29.01.2009. The Service of Construction of Residential Complex would attract service tax from 01.07.2010. Despite no service tax liability, if any amount has been collected by the builder as "Service Tax" for Services rendered prior to 01.07.2010, the same is required to be deposited by the builder to the service tax department. Builder can not retain the amount collected as Service Tax.
- (b) For services rendered after 01.07.2010 for which payment has been or is made after 01.07.2010, service tax is leviable and builder is liable to deposit the service tax to the service tax department. The only exception to this is provided within the parenthesis ( ) in the "Explanation" in para 3.
- (c) For services rendered after 01.07.2010 for which payment was made prior to 01.07.2010, service tax has been exempted by the Govt. based on documentary evidence vide notification no. 36/2010-S.T. dated 28.06.2010 as amended. Therefore, this benefit can be availed by builders on the basis of documentary evidence.

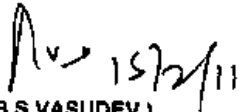
**5. Authority competent to issue completion certificate**

As regards authority competent to issue completion certificate, the MOF has issued Service Tax (Removal of Difficulties) Order, 2010 effective from 01.07.2010 vide MF (DR) Order No. 1/2010, dated 22.06.2010 stating that the expression 'authority competent' includes besides any Government authority-

- (i) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
- (ii) chartered engineer registered with the institution of Engineers (India); or

(iii) licensed surveyor of the respective local body of the city or town or village or development or planning authority; who is authorized under any law for the time being in force, to issue a completion certificate in respect of residential or commercial or industrial complex, as a per condition for its occupation.

6. All the Trade Associations and Chamber of Commerce and Industries are requested to bring the contents of this trade facility to the notice of the members of the association.

  
(B.S.VASUDEV)  
Commissioner  
C.Ex. & S.Tax  
Pune-III Commissionerate

F.No. - VGN(30)80/TradeNotice/10/  
Pune, the 15<sup>th</sup> Feb, 2011.

Copy to:

1. The Dy. Secretary, GIMFDR, New Delhi.
2. The D.G.I, C.C.Ex., New Delhi.
3. The Addl. D.G.I. C.C.Ex.,WZU, Mumbai
4. The Chief Commissioner, Central Excise, Pune Zone, Pune.
5. The Commissioner of Central Excise Pune-II/Goa/Kolhapur Commissionerate.
6. The Commissioner of Customs, Pune
7. The Commissioner (Appeals), Pune-II/III/Goa
8. The Addl.Dir. D.G.C.E.I., Regional Unit, Pune.
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11. All Members of RAC/PGC in the Commissionerate.
12. All Trade Associations & Chambers of Commerce & Industries in the Commissionerate.
13. All Addl./Jt./Dy./Asstt. Commrs, at Hdqrs, Divisions and Service Tax, Pune III Commissionerate.
14. All GOs / Section Heads at Hdqrs, Pune III Commissionerate.
15. Trade Facility Subscribers.
16. The Confederation of Indian Industry, Western Region, Pune, Bungalow No.2, Ganeshkhind Road, Pune 411005.
17. Maharashtra Chamber of Commerce, Industries & Agriculture, PO Box No.525, Tilak Road,Pune- 411002
18. Software Exporter's Association of Pune, Kapilvastu, 397/7, Senapati Bapat Road, Pune- 411016.
19. Association of Export Oriented Units, c/o Serum Institute of India, Off Soli Poonawala Road, 212/2, Hadapsar, Pune 411028.
20. Association of Indian Forgings Industry, 101/112, Nyati Millenium, Nagar Road Viman Nagar Pune-411014.
21. Maharashtra State Tax Practitioner Association Federation / Pimpri Chinchwad ITP-STP Association, Pimpri, P.J. Chambers, II Floor, 2A, Block No. 304, Pimpri Pune-411018.
22. The Systems Manager, EDP Section, Hdqrs. Pune-III Commissionerate to upload on the web site of Commissionerate immediately.
23. Additional Director General (Systems) New Delhi for information.