

PRESS RELEASE

Service tax on construction activities – proposed amendments –Finance Bill, 2010

The Institute of Chartered Accountants of India has submitted a Concept Paper for determination of taxable value of services from composite consideration in respect of commercial or industrial construction service and construction of complex service to the Ministry of Finance on 20.04.2010.

The issue of the proposed imposition of service tax on construction of residential, commercial and industrial property in the Finance Bill, 2010 has been a matter of concern for the real estate and construction industry as well as buyers of properties. The Finance Bill, 2010 has proposed to amend meaning of taxable service in relation to commercial or industrial construction service and construction of complex service to provide that unless the entire consideration for the property is paid after the receipt of completion certificate from the competent authority, the activity of construction would be deemed to be a taxable service provided by the builder/developer to the prospective buyer and the service tax would be charged accordingly.

The moot point here is that though the construction, in such cases, is deemed to be service, whether service tax can be levied on the entire consideration. The ICAI has been assisting the Government by providing inputs in the matter of formulation of statutory provisions relating to direct and indirect taxes as also providing suggestions for modifications in the concerned legislation. Following the practice, the ICAI has submitted the said Concept Paper which aims to provide some workable methods to the Government for effective implementation of the provisions relating to levy of service tax on this sector as also a simpler and easier method for computing the service tax liability for the assessee.

The Concept paper has been developed on the basis of the deliberations that took place in the Workshop and the discussions held thereafter at various levels. The ICAI has suggested that the value attributable to service element of the total consideration may be computed by any of the following methods, at the option of the builder:

I Direct Method

- Actual value of service element of sale consideration computed by the builder duly substantiated from records.

II Indirect Method

(A) *Exclusion of value of land*

At the option of the builder:

Either:

- On actual basis, if the actual value of land is available
or
- Deemed basis by way of abatement of specified percentage of the total consideration of the composite contract.

This abatement ought to be different for different places and for different uses e.g. in Delhi, the same basis is being adopted under VAT law for exclusion of land be adopted. For Mumbai, the rates of open land and constructed premises inclusive of value of land are available for most of the areas. The proportion of open land value and the constructed value of premises be adopted as basis for determining the land component of a composite contract.

(B) *Exclusion of value of material / goods:*

At the option of the builder:

Either

- On actual basis where a builder is able to determine the actual value of the material / goods sold to the buyer in the course of providing service (Notification 12/2003);
or
- On deemed basis after abatement at specified percentage - current abatement @ 67% for material / goods component be adopted (Notification No. 1/2006 ST dated 1.3.2006) – the rate is same for commercial and industrial as also residential construction.

III Composition Scheme

- 1% of total consideration including that towards floor rise and charges for any additional facilities/utilities provided by the builder for commercial, industrial and residential construction.