SERVICE TAX ON REAL ESTATE INDUSTRY

Output Services Involved- A Snapshot

***"Complex Construction Services"* w. e. f. 01.07.2010 (i.e. Basic sale Price, Car parking) – Service Tax@3.09% (i.e. 12.36*25%) i.e. under notification no 26/2012**

***Preferred Location Services* (i.e. PLC, Power back-up, FFC, EEC etc.) - Service Tax@12.36%**

***Renting of Immovable Property* (i.e. Renting\Leasing\sub-leasing of immovable property) – Service tax@Nil (Exempted for residential complexes)**

.

Detailed Applicability

- ***CONSTRUCTION OF RESIDENTIAL COMPLEX SERVICE:***

  "Construction of Complex" means —

  a) ***construction of a new residential complex or a part thereof; or***
  b) ***completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or***
  c) ***repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;***

(Section 65(30a) of the Finance Act, 1994)

"Residential Complex" means any complex comprising of—

i. **a building or buildings, having more than twelve residential units;**
ii. **a common area; and**
iii. **any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises *is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.***

Construction of commercial, industrial and residential complex commencing on or after 01.07.2010 shall be liable to service tax. Applicability of service tax will be based on provisioning of services. Booking date is irrelevant. Provisioning of services on or after 01.07.2010 shall be liable to service tax.

Components taxable@3.09%:

- ***Basic sale Price***
- ***Car parking (I.e. covered/open)***

- ***"Preferred Location Services"***

  "Preferred Location Services" or "Special Services provided by builder etc. to prospective buyer" is notified w.e.f 1st July, 2010. This category sought to tax the amount charged by builders to buyers for special services such as prime/preferential location such as sea facing, park facing, corner flat etc. laying of sewerage & water pipelines, providing access roads & common lighting etc., charges for fire-fighting installation & power back up etc. The amount recovered towards parking space is specifically excluded from the levying the service tax. For this category, no abatement or exemption is being provided except under notification no.36/2010-ST dated 28th June, 2010 which provides that any consideration received as advance before 1st July, 2010 will be fully exempted from the service tax.

Components taxable@12.36%:

- *PLC For Golf/Park/Road*
- *Power Backup Charges*
- *External and Internal Development Charges*
- *External Electrification Charges*
- *Fire Fighting Charges*
- *Club Membership Charges*

- ***"Renting of immovable property"***

  "Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —(iv)(d) Building used solely for residential purposes and buildings used for the purposes of accommodation.

Components taxable@ NIL:

- *Lease Rent Charges*

- ***"Bundled Services"***

  'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. These rules, which are explained below, are subject to the provisions of the rule contained in sub-section (2) of section 66F, viz. a specific description will be preferred over a general description.

  1. ***The rule is – 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'.***
  2. ***The rule is – 'If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.'***

In case of corporate clients, Company has bundled services under "other charges". Where company is bundling various services (i.e. Lease rent, PLC, Car parking etc.) under one head "other charges". Since the second rule dominates as the given services do not naturally bundled in ordinary course of business, the rate to be charged is the highest rate of service tax i.e. 12.36%.

Rate of service tax

Service tax is payable on gross value of taxable services @ 12.36% (Service tax 12%, plus education cess of 2% plus HSEC of 1%).

Abatement/Exemption

If the service is covered under service of construction of commercial buildings or residential complexes, builder can opt for Abatement Scheme applicable to these services, under which service tax is to be paid on 25% (where Land Price is included in the Gross Value) /33% (where Land Price is not so included) of the gross value received.

Service tax on activity of developers of selling the building or part of the building to be constructed on advance payment (usually construction linked payments) was made subject to service tax under the category of "Commercial or Industrial Construction Services" and "Complex Construction Services" w. e. f. 01.07.2010.

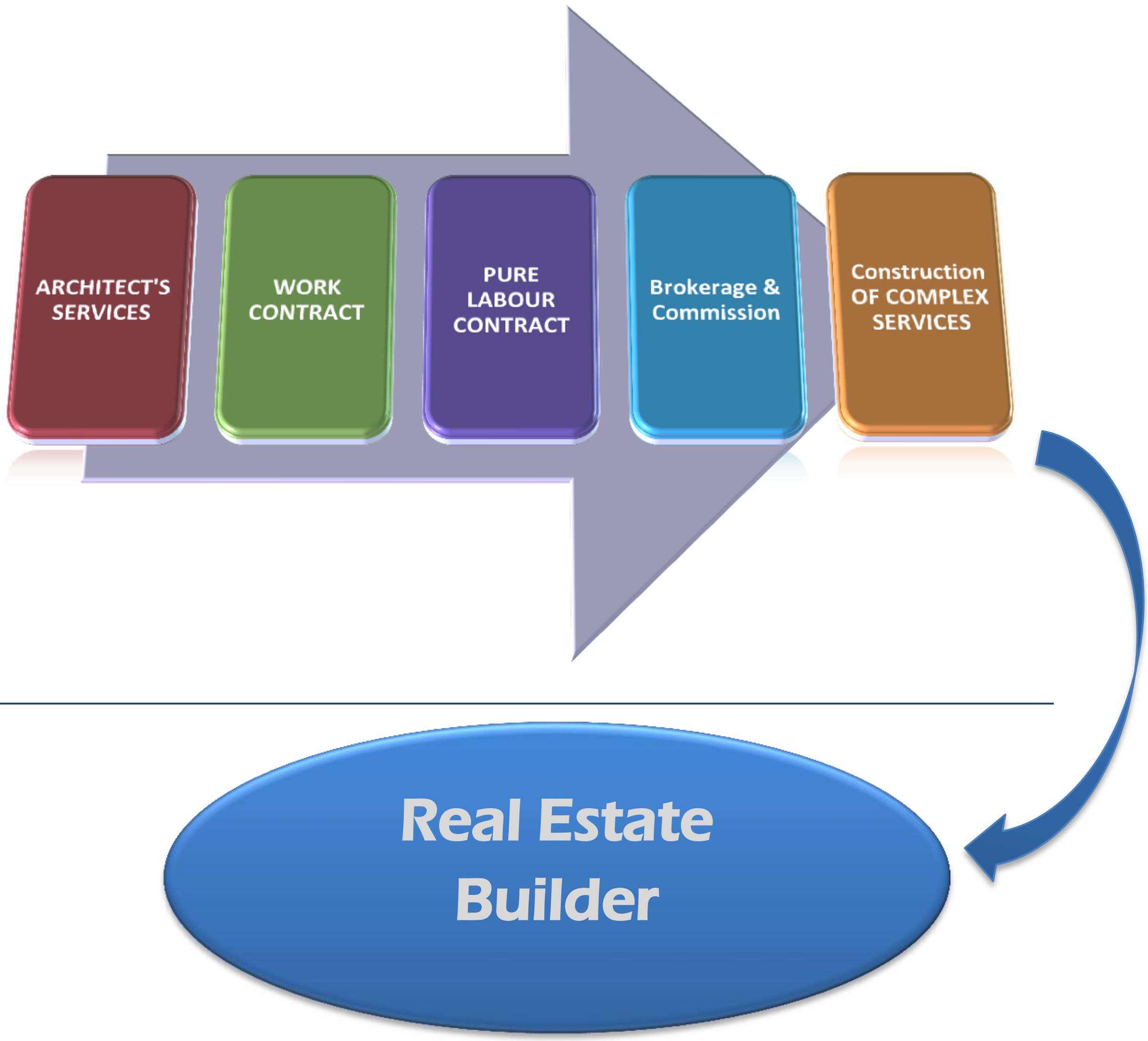
Now, w. e. f. 01.07.2012, in negative list regime, activity undertaken by developers have been included as declared service in clause (b) of section 66E of Finance Act, 1994.

Relevant abatement scheme as given in Sr. 12 of table given in Notification No. 26/2012(or 02/2013) dated 20.06.2012 is as under:

Sl. No.	***Description of taxable service***	***Percentage of Taxable portion***	***Conditions***
12	***Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority,-***		***- Cenvat credit on inputs not availed - Land value is included***
	(i) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one Crore*	***25%***	
	(ii) For other than (i) above	***30%***	

****The above two conditions are cumulative (i.e. when both the conditions (2000 Sq. ft. and 1Cr) are satisfied then percentage of taxable portion is 30 % otherwise 25 %.)***

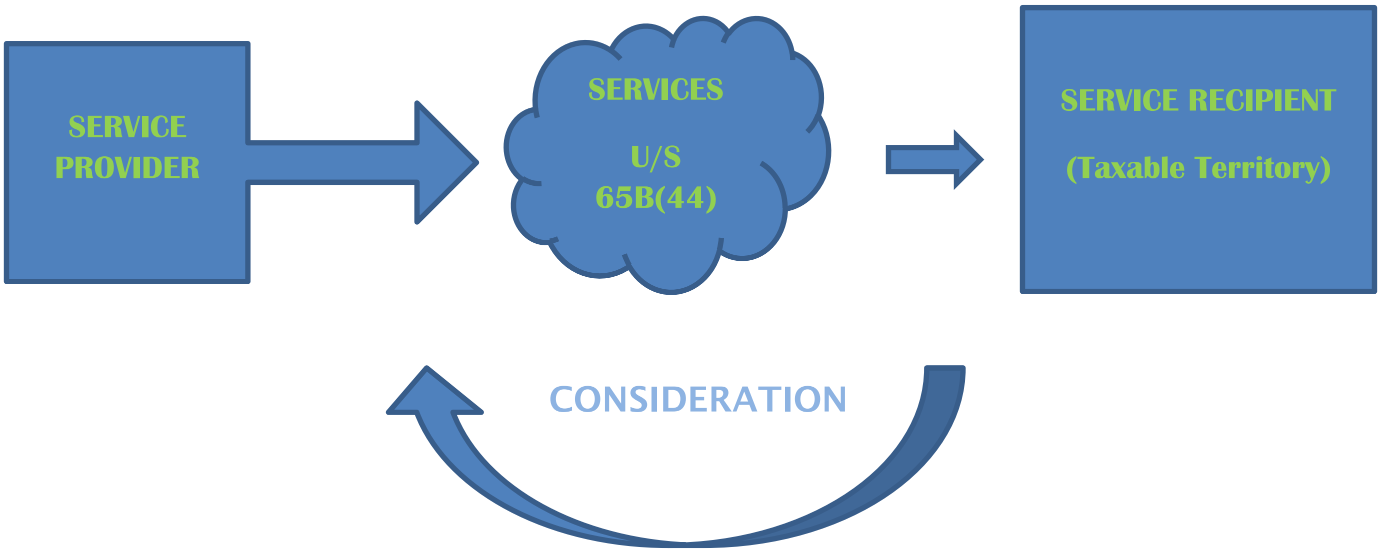
SERVICES INVOLED – A SNAPSHOT



Applicability Of Service Tax

Section 66B specifies the charge of service tax which is essentially that

- ***service tax shall be levied on all services***
- ***provided or agreed to be provided***
- ***in a taxable territory,***
- ***other than services specified in the negative list.***



Generally, service providers are liable to pay service tax to the credit of govt. In certain situations (Not. No. 30/2012-ST), service recipients are liable to pay service tax to the credit of govt.

What is service?

Service' has been defined in clause (44) of the new section 65B and means –
- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

The said definition further provides that "service" does not include
- any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- a transaction only in (iii) money or (iv) actionable claim
- any service provided by an employee to an employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

Explanation 1. • For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,-
(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.
Explanation 1A- For the purposes of this clause, transaction in money shall not include, any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged:".

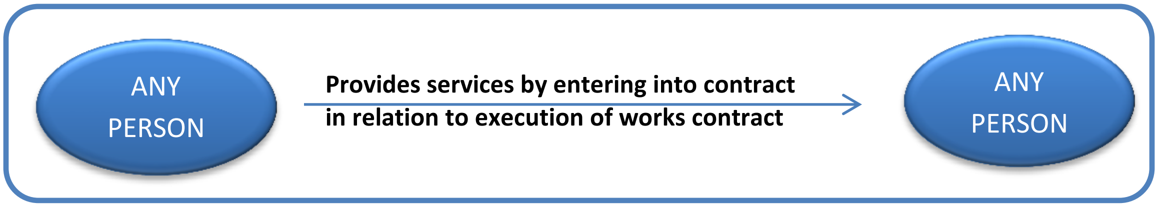
Explanation 2.- For the purposes of this Chapter,-
(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 3.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

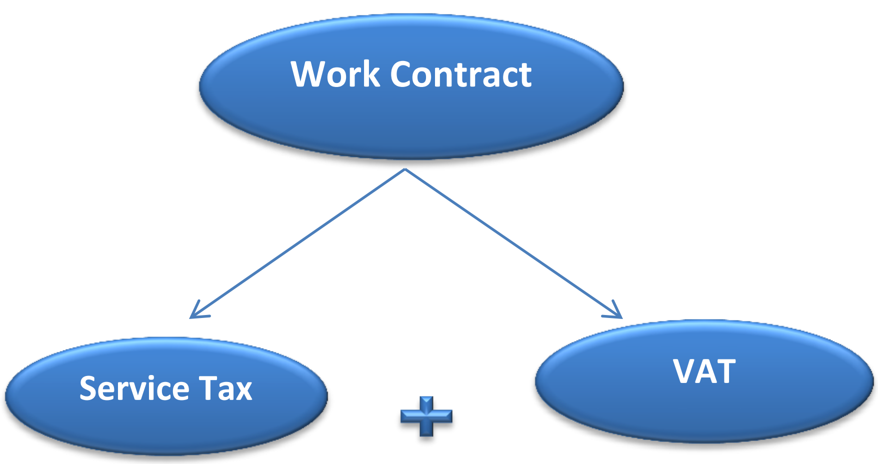
REVERSE CHARGE MECHANISM
(services where service recipient is also liable to pay tax)
(Refer Not. No. 30/2012-ST)

SR	Service	Service recipient	% of ST payable	
			Provider	Recipient
1	Provided by person who is located in non-taxable territory and received by any person located in taxable territory	Any person4	Nil	100%
2	Works contract services by individual, HUF, firm or AOP	Body corporate	50%	50%
3	Manpower supply for any purposes or security services by individual, HUF, firm or AOP	Body corporate	25%	75%
4	Renting of vehicle to any person who is not engaged in the similar line of business to carry passenger by individual, HUF, firm or AOP - With abatement - Without abatement	Body corporate	Nil 60%	100% 40%
5	Support services by Government (excluding renting and 66D (a) (i) to (iii)	Business entity	Nil	100%
6	Provided or agreed to be provided by a director of a company to the said company (w.e.f. 7 August 2012 vide Not. 45/2012)	Company	Nil	100%
7	Individual advocate	Business entity	Nil	100%
8	Arbitral Tribunal	Business entity	Nil	100%
9	Sponsorship	Body corporate or PF	Nil	100%
10	GTA	Company, P. Firm, Factory, Society, excise registered assessee	Nil	100%
11	Insurance agent to insurance companies	Insurance business	Nil	100%

WORK CONTRACT SERVICE



A tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract; - Article 366(29A)(b)
'Works contract' means a contract for carrying out any work which, includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property. [Sec. 2(ja) of CST Act]
In simple words, When in a transaction there involves transfer of property in goods and provision of services, then the said transaction is called 'Works contract'. If it is a pure labour contract i.e. contract for providing services only, then it will be classified under the appropriate head under service tax and taxable accordingly.



WORK CONTRACT = (Materials + Services) contract, wherein transfer of property in goods and provision of services are involved.