

LIABILITY OF CO-OPERATIVE HOUSING SOCIETIES TO SERVICE TAX

Service tax liability of Co-operative Housing Societies is the most burning issue at present. Prior to 1st July 2012 views about taxability and quantification differed to a large extent. But as of today even though there are different views on some issues it is practically settled that the Co-operative Housing Societies are liable to service tax. The service tax consultants have interpreted the provisions giving reasoning and accordingly societies decide about charging the service tax to their members and pay the same.

Under these circumstance before I draw your attention to some of the views and also those of mine, relating to applicability of service tax to Co-operative Housing Societies, let me draw your attention to the following.

- a. That the service tax provisions are applicable to Co-operative Housing Societies as against the common view that Co-operative Housing Societies are the mutual associations and therefore societies are not liable to service tax.
- b. If society's billing to members for taxable services exceeds Rs. 10 lakh in a year society will liable to service tax.
- c. If society is liable to service tax, it must apply for service tax registration when the billing exceeds Rs. 9 lakh.
- d. For the period up to December 2012, the central government has declare a kind of amnesty scheme under which interest and penalties have been waived and service tax to the extent of 50% of the liability need to be paid before 31st December 2013 and balance before 30th June 2014.
- e. The societies which are liable should take benefit of this amnesty to save substantial sum of money.

- f. There is little time left to initiate the process and therefore it is wise for the society to approach some consultant in the matter without further loss of time.

Now I would like to give some details, which are to certain extent, technical and in legal parlance, but necessary to understand the development of the law.

The Service Tax was, for the first time, introduced by Finance Act, 2005 by introduction of Sec 65 (105) (zzze) along with an explanation to the same to levy Service Tax on “Club or Association Services”. Prior to this Service Tax on such Mutual Association was not chargeable.

To avoid ambiguity and for the purpose of expanding scope of “Services”, the words “Facilities” and “Advantage” were added and for similar purposes the word “Consideration” was replaced by the words “Subscription” and “any other amount”.

There were different interpretations as well as judgments of the high court negating the taxation of mutual association as well as the power to tax reimbursement of expenses to service tax are concerned. However, with the amendments as stated above, by and large, the levy of Service Tax on unincorporated associations and body of individuals has been accepted.

At the same time let me make a note here that, the dispute of levy of Service Tax on Co-operative Housing Society has so far not reached to any higher judicial forum to have any definitive solution. It may happen in due course of time.

In the meanwhile, a beneficial notification under Reference No. 8/2007 was issued on 1st March 2007, whereby Resident Welfare Association (RWA) were given exemption up to Rs. 3,000/- Per Month Per Member.

The above stated position continued up to 30th June, 2012. Up to 30th June 2012 the concept of charging Service Tax on 119 specified categories of services prevailed. With effect from 1st July 2012 the concept of encompassing almost all activities except those listed in the negative list was introduced by amending the law.

An Exemption notification no. 25/2012–Service Tax was issued on 28th June 2012 under which, by entry 28, the exemption was given to “service by an unincorporated body or a non-profit entity registered under any law for time being in force to its own members, by way of reimbursement of charges or share of contribution up to an amount of Rs. 5,000/- Per Month Per Member for sourcing of goods or services from third person for common use of its members in a housing society or residential complex”.

I would also like to note here that, the “declared services” as defined u/s 66E (e) made it clear that, the declared services which are taxable are, “Agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act”. This particular declared services bring within the scope of taxable services, the services provided by Co-operative Housing Society such as non-occupancy charges etc.

Further basis exemption Rs. 10 Lac to Co-operative Housing Society is an option given to the societies and therefore, if the society is sure of not exceeding this limit during financial year, it may not go for registration of the society under Service Tax provision on exceeding limit of Rs. 9 Lakh, but at the same time this being an optional exemption the society should avoid collection Service Tax in such cases.

The society need to apply for registration when the taxable amount exceeds Rs. 9 Lac and such application need to be filed within 30 days. As far as the point of taxation is concerned my view is that, the society falls within the category of “Continuous supply of services” and therefore you should charge Service Tax to the members on the taxable services on continuous basis. However, the payment of Service Tax need to be made on 5th of the month following the month in which due date of the invoice falls. It is also necessary to mention the Service Tax Number as well as clearly indicate the taxable services and amount of Service Tax there on.

It is therefore advisable that if your society is liable for Service Tax it will be too late to avail the benefit of “Service Tax Voluntary Compliance Scheme” unless you act immediately. The Amnesty is really quite attractive to save interest and penalties, but the last date for which is 31st December 2013.