

Circular No. 179/5/2014-ST

F.No.354/187/2013-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Tax Research Unit

North Block, New Delhi
24th September, 2014

To,
Chief Commissioners of Central Excise and Service Tax (All),
Director General (Service Tax), Director General (Audit),
Director General (Central Excise Intelligence),
Commissioners of Service Tax (All),
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

Subject : Service Tax -- Joint Venture – reg.

Certain doubts have been raised regarding the levy of service tax on taxable services provided (i) by the members of the Joint Venture (JV) to the JV and vice versa; and (ii) inter se between the members of the JV. In addition, doubts have also been raised regarding taxation of cash calls or capital contribution made by the members to the JV and also administrative services provided by a member to the JV.

2. The issue has been examined. With effect from 1st July, 2012, under the negative list approach, all services are taxable subject to the definition of the service [available in section 65B (44) of the Finance Act, 1994], other than the services specified in the negative list [section 66D] and exemption notification [Notification No. 25/2012-ST]. According to Explanation 3(a) of the definition of service, “an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons”. In accordance with the above explanation, JV and the members of the JV are treated as distinct persons and therefore, taxable services provided for consideration, by the JV to its members or vice versa and between the members of the JV are taxable.

This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

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3. In the context of a JV project, cash calls are capital contributions made by the members of JV to the JV. If cash calls are merely a transaction in money, they are excluded from the definition of service provided in section 65B(44) of the Finance Act, 1994. Whether a 'cash call' is 'merely... a transaction in money' [in terms of section 65B(44) of the Finance Act, 1994] and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

4. Detailed and close scrutiny of the terms of JV agreement may be required in each case, to determine the service tax treatment of cash calls. Some important aspects, by way of illustration, which could be examined in this regard, are:-

4.1 Taxable service provided by a JV to its members: Cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services to be received from the JV. For instance, JV which receives the cash call from its members may in return agree to do something of direct benefit either to the member or on the behest of a member to a third party, such as granting of right, reserving production capacity or providing an option on future supplies.

4.1.1 Taxable services received by a JV from its members or third party: Payments made out of cash calls pooled by a JV, towards taxable services received from a member or a third party is in the nature of consideration and hence attracts service tax.

4.2 Taxable services provided by members to the JV: Usually responsibility of managing the cash calls of the JV is assigned to one or some of the members of the JV, by way of a contractual agreement, for which he/they may receive a consideration either in cash or kind (say, goods or services).

A member of JV may provide support services (for example, administrative service in the form of setting up/management of a project office/site office) to the JV for a consideration either in cash or kind (say, goods or services).

5. JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. Therefore officers in the field formations are advised to carefully examine the levability of service tax with reference to the specific terms/clauses of each JV agreement.

6. All concerned are requested to acknowledge the receipt of this circular.

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7. Hindi version to follow.

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