



## news flash

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### SERVICE TAX ON JOINT VENTURE AGREEMENTS

The service tax regime in India has changed significantly since the introduction of negative list in 2012. Under the negative list approach, service tax is leviable on all services falling under the definition of service under section 65 B (44) of the Finance Act 1994 except services mentioned in the negative list [section 66D] and those that are specifically exempted. Under the present regime it was unclear whether service tax was leviable on (i) taxable services provided by members of the Joint venture (“JV”) to the JV and *vice versa*; (ii) taxable services provided *inter se* between the members of the JV; (iii) cash calls or capital contributions made by the members of the JV to the JV; and (iv) administrative services provided by a member to the JV.

The Central Board of Excise and Customs (“CBEC”) has now issued a circular no. 179/5/2014 dated 24<sup>th</sup> September 2014 (“circular”) providing clarity on these issues. The content of the circular has been summarized hereunder:

1. Taxable service provided by a JV to its members or vice versa or inter se between the members of the JV

The circular issued by the CBEC clarifies that taxable services provided for consideration by the JV to its members or vice versa and inter se between the members of the JV, are taxable. In this regard, the circular relies on explanation 3 (a) of the definition of service, which provides that, “an unincorporated association of persons, or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons.” Accordingly, the JV and its members would be treated as distinct persons for the purpose of definition of ‘service’ and therefore such taxable services when provided for consideration are liable to levy of service tax.

2. Cash calls/capital contribution by a member to the JV

The circular provides that generally if cash calls or capital contributions made by the members of the JV to the JV qualify as merely ‘a transaction in money’ [as per section 65B(44)] then they would not be liable to levy of service tax. Whether a cash call is merely a transaction in money, would depend on the terms of the JV agreement which would need to be considered carefully.

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The circular further provides that in certain cases cash calls may also be subject to service tax, for e.g. (i) if cash calls are in the nature of advance payments made by members towards taxable services to be received from the JV. For instance if the JV which receives the cash calls from its members agrees to do something of a direct benefit to such a member or on the behest of such a member to a third party, such as granting of right, reserving production capacity, or providing an option on future supplies; (ii) payments made out of cash calls pooled by a JV towards taxable services received from a member or a third party.

### **3. Administrative services provided by a member to the JV**

The circular also provides that service tax would be leviable on support services (for instance administrative/support service in the form of setting up/management of project office/site office) provided by a member to the JV for a consideration either in cash or kind.

The circular also advises officers to make a comprehensive examination of JV agreements for taxation of transactions involving taxable services, between the JV and its members or inter se between the members.

### **Conclusion**

The circular, reaffirms the fairly settled principle that an unincorporated association of persons and its member shall be construed as distinct legal persons, but it also brings out desired clarity on the taxation of services between the members and the JV and inter se between members. An important take away from the circular is the need to make comprehensive analysis of JV agreements and the terms incorporated therein, for determining the taxability of services. Hence, where cash calls are only towards making financial contribution to the JV and not in exchange of any services between the JV and the members, it would be vital to draft the terms of the JV agreement in a water tight manner, so as to ensure that the terms of the agreement clearly bring out this intention of the parties.

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