



## LATEST UPDATE ON SERVICE TAX ON RWA

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### Background

The Residential welfare association's (RWA's) sought to keep out of service tax levy, citing mutuality concept. As both service provider and service receiver are the members of RWA themselves, the transaction cannot be subject to service tax.

At the same time under negative list based taxation, the explanation 3(a) to the definition of service, deems that: **an unincorporated association or body of persons and members thereof are treated as distinct persons.** [also existed in the explanation to section 65 under earlier service tax law].

An implication of this deeming provision is that inter-se provision of services between such persons, deemed to be separate persons, would be taxable. For example, services provided by a club or association to its members would be taxable provided other conditions relating to taxability of service are satisfied. Some experts are of the view that this can be challenged on constitutional vires.

In *Ranchi Club Ltd vs. CC of CE&ST, Ranchi and Others*(2012)(26) STR 401(Jharkhand) the Jharkhand High Court (appeal admitted before SC) has held that in case of a club, it is mutuality which is constituting it. There are no two persons or two legal entities in activities of a members club. It was also observed, that if club provides services to members, it is not a service by one to another as the existence of two entities is missing.

In recent decision in *Tahnee Heights 2015-TIOL-108-CESTAT-MUM*, CESTAT, relying on *Ranchi Club and Sports Club of Gujarat vs. Union of India - 2013-TIOL-528-HC-AHM-ST* held services to members of club or cooperative housing society is not service by one to another not chargeable to service tax. Both the cases relied upon are presently pending before Supreme Court where the department has filed appeal.

In other words a view is possible that the service, which is provided by RW association to its members, is not liable to service tax despite of the deeming fiction in the law that the member and association are different.

But until the clarity emerges from Apex Court, when an RWA opts not to pay service tax citing mutuality better to intimate dept by RPAD letter with reasons why not paying and seek confirmation of understanding. When RWA claims exclusion for the services to members citing mutuality, it would be liable to service tax on taxable services provided to outsiders such as renting of club house, sale of space for advertisement on notice boards.

To conclude, with GST on the anvil, there could be a valid question whether RWA to come into tax net. In the view of the paper writer, it could be possible to claim exclusion for supply of services from GST net, citing mutuality in the activities of a RWA..