CREDAI - MCHI

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February 08, 2019

To,
Hon'ble Shri Piyush Goyal
Minister for Finance,
Minister for Railways & Coal,
Government of India
North Block,
New Delhi – 110 001

Sub: Additional suggestions for improving the health of the Real Estate Industry

Respected Sir,

The Real Estate Industry today is going through a rough patch and some of the impediments, both revenue and non-revenue in nature are only making going tougher by the day. The ultimate loser is the aspiring house hunter. Just at the time, post 6~8 quarters, when the real estate sector was just about showing initial signs of recovery, that it was hit by the NBFC crisis. This crisis has further pushed the sector into the doldrums from where, if some major corrective actions are not taken without any further delay, timely completion of under-construction projects and roll out of new ones would come to a standstill. The Real Estate industry is collectively looking up to you as the last glimmer of hope, the last bridge leading to doom or the path to recovery!

Please find attached herewith some of the additional CREDAI-MCHI's recommendations for improving the health of the real estate industry.

Thanking you,

Your sincerely,
For CREDAI-MCHI

Nayan A. Shah
President

Bandish Ajmera
Hon. Secretary

Sanjiv S. Chaudhary MRICS
Chief Operating Officer

Encl: As above

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Additional Suggestions for Union Budget
(Real Estate Sector)

DIRECT TAXES

February, 2019

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Affordable Housing Measures				
Section 80-IBA Deduction in respect of profits and gains from Affordable Housing Projects	This section primarily covers affordable housing upto 60 sqmtr carpet area for EWS and LIG, under Pradhan Mantri Awas Yojana.	Extension of the provisions of this section for housing units of 120 and 150 sq mtr carpet area for MIG I & MIG II, included in PMAY for interest subvention scheme, will provide great relief to MIG segment and incentive to developers.	• Extend provisions of section 80IBA to housing units upto 150 sq mtr carpet area, to cover MIG categories, who are already covered in PMAY for mortgage interest subvention. • It is also suggested that the validity of above provisions should be extended to projects sanctioned on or before 31st March, 2024. • It is also suggested that the benefits of the provisions of this section should be made available to the full potential of the plot and not just to the part thereof that may have got approval before the expiry date of validity of this section.	While it will help provide great relief to the huge MIG segment under Housing for All by 2022, it would also encourage more developers to participate. Given the current crisis that the real estate sector is going through, the initial planning of the projects may get delayed until the improvement of the liquidity crisis which may take upto 3 years from now. Approvals are taken in stages and there is no control on the urban local bodies that grant approval to the project. Should the benefits of the provisions of this section not be accorded on the full potential, commercial planning of the project may take a big hit.
Relief to Individuals				
Section 24 (b)	• Present limit for deduction of interest against "Rental income" under section 24(b) is INR	Home-buyers lose on the benefit of interest claim which exceeds INR 200,000 despite of actual payment of the interest, causing	• It is suggested that, in case of individuals, the interest in respect of	Increase in interest deduction will encourage the home-buyers to

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Deduction of housing loan interest	200,000 for self-occupied property.	hardship to the individual home-buyers.	first self-occupied property should be allowed without any limit. • Alternatively, the limit for deduction of interest should be increased to INR 10,00,000 in respect of the self-occupied property.	invest in the real estate and increase the demand in the market.
Section 71(3A) – Deduction of loss under the head Income from House Property in respect of interest on house property loan	The Finance Act, 2017 introduced a new section 71(3A) to provide that with effect from AY 2017-18 set-off of loss under the head "Income from House Property" against any other head of income should be restricted up to Rs. 2,00,000 per annum.	This restriction has impacted thousands of buyers who have availed housing loans in the past based on the then prevailing provisions and the buyers lose on the benefit of loss in excess of INR 200,000 arising on account of actual higher interest paid by them on loans borrowed.	• The provisions of section 71(3A) should be deleted with retrospective effect. Alternatively, the provisions of section 71(3A) should be made applicable to loss arising on account of interest payable on loans availed after 31 March 2017.	• The deletion of section will help the existing home buyers who have availed loans for buying property and lot of hardships will be caused to the existing home buyers. Further, the removal of limit will boost the confidence of the buyers and will
Section 80C Deduction for Principal Repayment of Housing Loan / Cost of first Self Occupied House Property	• The ceiling of deduction for principal repayment of housing loan is INR 150,000 Further, the above deduction is clubbed with other tax saving instruments	• The ceiling of INR 150,000 is insignificant, more so when it is also clubbed with other tax saving instruments Many assessees are not able to claim the benefit of this deduction to the fullest considering the above limit and other available deductions under section 80C.	• The deduction under section 80C should be allowed to individuals in respect of the cost of their first self-occupied house property up to INR 5,000,000. The said deduction could be spread over a period of 5 years. • Alternatively, the deduction for principal repayment of housing loan can be considered for a separate or standalone exemption.	Increase in the deduction for principal repayment of housing loan will encourage the home-buyers to invest in homes. Increased housing stock would boost affordability through rental housing.

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Ease of Doing Business for Real Estate				
Section 45 r.w.s. 2(47) (in case of Joint Development Agreements ('JDA')- Point of accrual of capital gains) Section 28 (in case of JDA - Point of accrual of business income)	• **In case Assessee being corporates and non-corporates (other than individual and HUF)**			
	• Section 2(47) defines transfer of a capital asset to include, *inter-alia*, any transaction that immovable property allows possession to be taken or retained under a contract referred to in section 53A of the Transfer of Property Act, 1882. • Section 28 enumerates the income which would be liable to tax as 'Income from Business/Profession'.	• There exists uncertainty with respect to point of accrual of capital gains. It has been laid down by Tribunal / Courts that Capital Gain accrues at the time of entering into JDA, issuing the General Power of Attorney to the developer and giving the possession. • In area sharing or revenue sharing arrangement, land owner had to pay taxes immediately upon entering into JDA whereas actual consideration flows at future date.	• Provisions of Section 45(5A) of the Act should be made applicable to all the assessees owning land and should not be restricted to only individuals and HUFs. • The amended provisions should be applied irrespective of whether the land owner owns the land as capital asset or business asset. • The amended provisions should be applicable to all types of JDA arrangement including areas share or revenue share.	• JDA has evolved as an efficient and effective model for the sector. It will contribute in achieving the Government's vision of 'Housing for All by 2022'. • JDA provides flexibility to land owners to reap benefits of value addition through housing. • Payment of tax at the time of JDA when actual consideration would flow in at future date, acts as a disincentive towards housing and real estate development. • The amendment will help avoid enormous amount of litigation.
	• **In case Assessee being Individual and HUF**			
	• Union Budget 2017 has introduced sub-section 5A to Section 45 of the Act. According to the new provisions, capital gains arising to an assessee being Individual or HUF, shall be	• Taxation event is shifted. However, period of holding of immovable property in case of land would still be computed till the year in which JDA is executed by the assessee.	• The period of holding for the immovable property for JDA transaction ought to be calculated upto the date of issuance of completion certificate.	• JDA has evolved as an efficient and effective model for the sector. It will contribute in achieving the government's vision of 'Housing for All by 2022'.

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	chargeable to tax in the year in which certificate of completion for the whole or part of the project is issued by the competent authority.	• New provision is applicable for area sharing model. No clarity is available with respect to revenue sharing or mix sharing (areas and revenue sharing model). • No guidance is available for valuation of unsold units in area sharing and revenue sharing model. • Taxation event is shifted however, the time limit for claiming benefits under Section 54 and 54F of the Act is reckoned form the date of transfer.	• The amended provisions should be applicable to all types of JDA arrangement including areas share or revenue share. • Guidelines should be specified for valuation of unsold units. • Provisions of Section 54 and 54F of the Act should be amended to bring them in the line with amended provisions of Section 45(5A) of the Act.	• This would bring certainty and better clarify on applicability of amended provisions of Section 45(5A) of the Act.
Section 2(31) JDA considered as an Association of Persons ('AOP')	• Defines 'person' to include an AOP • AOP is not separately defined in the Income-tax Act, 1961 • The interpretation of the term 'AOP' is based on the principles laid down by the decisions of courts and tribunals	• Currently, there does not exist any provision for specifically governing the taxation of JDAs. • Some orders and judgements have held that income from JDA transaction should be taxed as AOP. This results into taxability of share of land owner even as being Individual / HUF, they may be taxed at lower / nil rate.	• It is recommended that suitable instructions/guidelines/rules be issued for the tax treatment of JDAs after obtaining the comments from the stakeholders with specific clarification that a JDA transaction will not be regarded as AOP.	• Recent tax uncertainties in JDA transactions has been a deterrent for the parties to enter into such transactions, which has, inter alia, impacted the cost of housing units to home purchasers. • Thus, providing clarity on the JDA transactions can go a long way in catering to housing needs.

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Deductibility of Expenditure				
Section 94B Thin Capitalisation provisions	• Union Budget 2017 has introduced Thin Capitalisation provisions where by deductibility of interest expenditure is restricted to the extent of 30% of earnings before interest, taxes and depreciation, in case of specified scenarios.	This would result in huge disallowance in the hands of Real Estate Developer on account of interest expense. • In case of merger / demerger of project SPV having carry forward interest expenditure under proviso to Section 94B(4) of the Act whether merged / resulting entity would be eligible to utilized the said interest.	• Thin Capitalisation provisions should not be made applicable to Real Estate Sector. • Grandfathering provisions should be introduced to enable merged / resulting entity to claim deduction of brought forward interest expenditure.	Real Estate Sector is facing various challenges including liquidity crunch. The project SPV raises debt from third party and related parties for carrying out its business activities. Disallowance of expenditure due to Thin Capitalisation provisions would result into huge disallowance and consequently tax liability in the initial years. This would lead to undue hardship for the Real Estate Developer.
Section 14A of the Act & Rule 8D of Income Tax Rules, 1962 Expenditure in relation to income not includible in total income	• Section 14A provides for disallowance of expenditure incurred in relation to income which does not form part of the total income of the assessee (i.e. exempt income).	• It is a need of the sector to operate through SPV model to keep administrative expenses at the minimal level as compared to the value of the investments. • Further, project SPVs are funded using borrowings and tax authorities disallow interest expenditure stating funds are utilized for earning dividend income. • In such cases, the amount to be disallowed applying the formula	• No disallowance of interest and administrative expenditure in real estate sector where: ➢ owned funds are more than the total investments; ➢ investment is strategic investment and not with an intention to earn dividend; ➢ there is no exempt income earned during the year • Alternatively, there should be a cap of a maximum of 5% of the total	• Disallowance under Section 14A causes undue hardships to the real estate developers though the monies are used for the business i.e. real estate projects, but the multi-company structure is required due to specific requirements of the business. In any case, the dividend distributing company pays the dividend distribution tax/buyback tax, apart from the corporate tax; and therefore, there is no tax leakage. Such disallowance

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		of Rule 8D far exceeds the total expenses.	administrative expenditure or the amount of exempt income actually earned/received, whichever is lower. • Further, the 14A adjustment should not be applied while computing MAT liability.	therefore, leads to a kind of double taxation and hence, should not be made.
Deemed Taxation				
Section 43CA and Section 50C Deemed taxation based on stamp duty valuation for business assets	• Section 43CA, inserted by the Finance Act, 2013 (on lines as Section 50C) deeming stamp duty value as full value of consideration for transfer of immoveable asset, other than a capital asset.	• Section 43CA (like section 50C) is similar to section 52(2) withdrawn earlier due to Supreme Court decision in KP Varghese case (131 ITR 597). • Given the recent difficult economic conditions, the stocks have piled up and developers may sell them at prices below the concerned stamp duty prices. As a result, developers end-up paying tax on notional income. • Unlike section 50C, there is no alternate provision for valuation reference in case the stamp duty valuation is not acceptable to the assessee for whatever reason.	• It is recommended that the applicability of provisions of section 43CA should be done away with in case of real estate developers. • Alternatively, section 43CA should not be made applicable in certain situations like distress sale arising on sale by bank to recover its dues or for any other reason. • There should be provision for reference to the Valuation Officer. • **Similarly, provisions of section 50C should be done away with. Alternatively, similar amendments should be made to section 50C of the Act as well.**	• Guideline value is being fixed by States to augment their revenue without relationship to the existing market prices. As a result, in all metros and their vicinity, the guideline value is higher than the market prices which acts as a disincentive to potential buyers. • Property prices are determined by various factors like demand, supply, market (primary / secondary), locality, surrounding, in-house amenities, etc. Therefore, it is unfair to decide taxability with respect to stamp duty value where property is held as stock-in-trade.

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Mergers and Acquisition provisions to Rescue Stalled Projects				
Section 72A	• Section 72A allows carry forward and set off of business losses of the amalgamating company (being 'industrial undertaking') in the hands of amalgamated company, subject to certain conditions prescribed under Section 72A(2). • On the other hand, for a demerger, there are no such conditions required above; which is in the spirit of freely allowing tax neutral restructuring and hiving off of businesses.	• There is an apprehension among the real estate developers as to whether real estate qualifies as "industrial undertaking". This has posed major hurdle for consolidation in this sector. • Again, the conditions of section 72A (2), which apply only to amalgamation (and not demerger), restricts consolidation of businesses.	• To allow tax neutral consolidation of businesses by way of merger/amalgamations subject to fulfillment of other specific conditions of the Act; it is suggested to extend the provisions of section 72A to cases of amalgamations across businesses, and do away with the conditions of section 72A (2); so as to have it in line with the corresponding provisions of demerger.	• The need of the hour from the home purchaser point of view is to allow financially stronger firms to rescue delayed or stalled projects. • The amendment will help allow tax neutral mergers/amalgamations across industry and businesses, which can help boosting the performance through consolidations and help improve the slowed-down economic conditions in the country.
Impact of Income Computation and Disclosure Standards				
Applicability of ICDS IV for revenue recognition	• Presently, there is no specific ICDS in force which would govern revenue recognition for Real Estate Sector hence, ICDS IV is adopted. • Central Board of Direct Taxes has issued Draft ICDS for Real Estate Transaction vide Circular	• The present provisions of ICDS IV lead to uncertainty among stakeholders for revenue recognition. To be specific, there exist uncertainty for recording revenue for transactions like JDA, TDR related transaction, sale during pre-construction period, etc.	• ICDS for Real Estate Transactions should be prescribed, considering comments provided by stakeholders at the earliest.	• This would bring better clarity, certainty and reduce possible litigation at future date.

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	No. 10 dated 23 March 2017 but not notified yet.			
Provisions relating to 'Business Trust' i.e. Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT)				
Section 2(42A) Period of holding of REIT/InvIT units to qualify as long-term capital asset	• Section 2(42A) defining 'short term capital asset' was amended by Finance Act, 2014 to increase the holding period of unlisted securities and units (other than of equity-oriented fund) to qualify as long term capital asset, from 12 months to 36 months.	• The said amendment to section 2(42A) extends the holding period of REIT/InvIT units to 3 years, so as to qualify as 'long term capital asset'	• Suitable modifications should be made to the amendment to section 2(42A) so as allow a period of 12 months for REIT/InvIT units to qualify as long-term capital asset, in place of 3 years	• The very idea of having compulsory listing of REIT/InvIT is to create liquidity to encourage small savings into the real estate/infrastructure sector. A longer holding period to qualify as long-term capital asset defeats the purpose behind REIT/InvIT.
Section 47(xvii)	• Transfer of shares of the Special Purpose Vehicle (SPV) in exchange of units of REIT/InvIT shall not be taxable at the time of such exchange under normal provisions as well as under MAT provisions.	• Similar relaxation is not provided for transfer of the concerned asset directly to the REIT/InvIT. This would lead to taxation at the time of exchange of property against units, while there is no cash flow available.	• Transfer of assets being immovable property directly to the REIT /InvIT should be exempted from tax and MAT, at the time of such exchange. • In any case, the provisions of section 43CA/50C should not be applicable on transfer of properties and shares of SPVs to REIT/InVIT at the time of exchange.	• REIT/InvIT can hold the asset itself or hold shares of the SPV, in accordance with the concerned SEBI Regulations. Providing for specific tax exemption for one mode of holding (shares of SPV) and not for other (holding of asset directly) creates an uneven treatment between the two modes giving unfair advantage to shares over the physical asset.
Section 115-O	• The dividend distributed by an SPV to REIT is exempt to Dividend Distribution Tax	• Under the two-layer SPV structure, dividend paid by SPV to HoldCo will not enjoy the	• Suitable amendments to be made to provide exemption from DDT on	• The amendment will make the REIT more effective and will

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DDT on dividend distributed by an SPV	('DDT') in a single level SPV structure. • The SEBI has recently approved two-layer SPV structure for REIT.	exemption under the current taxation scheme and will be subject to DDT at the rate of 20.358%. • This will result into an additional tax cost and will have significant adverse impact on the investors return as compared to single level SPV structure.	dividends to be distributed by an SPV to HoldCo.	encourage the Real Estate Players to go for REIT.
Section 10(23FC) Exemption on Interest received or receivable from SPV	• The interest paid or payable by an SPV to REIT is exempt from tax. • However, there is no provision for similar exemption to interest income earned by the Hold Co from SPV under the two-layer structure. • Further, the definition of SPV provided in the explanation includes only an Indian Company and not LLP	• This additional tax cost will make the structure inefficient unless there is back to back interest payout by the Hold Co. • Further, non-inclusion of LLP in the definition of SPV will result into an unintentional levy of tax in the case of LLP structure.	• Suitable amendments to be made to provide exemption to interest income earned by the Hold Co from the SPV. • Further, the definition of SPV should be amended to include LLP, so as to bring LLP structure at par with the Company structure of SPVs.	• The amendment will make the REIT more effective and will encourage the Real Estate Players to go for REIT.
Section 79 Non-allowance of carry forward and set off of losses in case of transfer of shares of	• Section 79 denies carry forward of losses in case of transfer of more than 51% shares of company in which public are not substantially interested.	Where more than 51% shares of the closely held SPV are transferred to REIT/InvIT in exchange of units, the losses of the SPV will become disentitled to be carried forward and set-off.	• Section 79 should be appropriately amended so as not to apply its provisions in case of transfer of shares of SPV to a REIT/InvIT.	• As the entitlement to set off past years losses reduces tax burden, it is as good as cash flow. Hence, the lapse of losses can hamper the viability of REITs/InvITs. • The transfer of assets to REIT/InvIT is based on the regulatory/fiscal convenience to mobilize savings

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closely held companies				and provide liquidity to debt laden and cash strapped projects. Section 79 was introduced to discourage trading of private companies with tax losses which contradicts the logic behind REIT.
Section 71B	• Provides for carry forward and set off of losses under the head 'Income from House Property'	• In case of REIT, the leased commercial property may have huge tax losses under the head 'House Property', which can be set off only against income under that head in ensuing years. • If the leased commercial property is transferred to the REIT, then the SPV/sponsor may not be able to offset such losses as the income flow would go to the REIT.	• Amendments be made to allow set-off of loss under the head 'House Property' against other incomes, to the entity which has transferred the leased commercial property to the REIT, to the extent the loss relates to such property. • Alternatively, the REIT should be allowed to absorb the REIT property related losses from the transferring entity and setoff the same against the REIT's future incomes.	• As the entitlement to set off past years losses reduces the tax burden and have impact on cash flow. Therefore, this becomes important business consideration for deciding whether to float REIT or no. • These amendments can provide tax neutrality even with respect to losses relating to assets transferred to REIT, thus removing the fiscal blockages for the REITs to thrive.