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CREDAI-MCHI UNITS

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REF. NO. MCHI/PRES/18-19/332

June 20, 2019

To,

Smt. Nirmala Sitharaman

Minister of Corporate Affairs, Finance

134, North Block, A- Wing, Shastri Bhawan,
Rajendra Prasad Road, New Delhi - 110 001

Sub: Key Prayers for Revival of Real Estate Industry

Respected Madam,

CREDAI-MCHI's Prayers:

RBI

- **FOR ON-GOING PROJECTS:** Until the liquidity situation eases, allowing a one-time restructuring of all developer loans.

- 1) **FOR NEW PROJECTS / LOANS:** Keep the Debt: Equity need as per banks at 75:25 or lower for all new loans by Banks, HFC's & NBFCs.

- The construction finance to be extended by Banks and HFC's for various payment seeking building plan approvals such as those shown in the adjoining tables, taking them as "land value margin component"

- 2) **FOR LIQUIDITY** : Immediate liquidity in the industry, either to the NBFCs or direction to Banks to support real estate funding and HFCs to support housing funding by increasing their exposure norms.

- 3) **AFFORDABLE HOUSING DEFINITION**

RBI to adopt the same definition for Affordable Housing as has been spelled out and make it a standard definition for the purpose of Section 80IBA of the Income Tax Act, 1961.

- a. Metro Centres : Upto carpet area of 60 sq.mtrs. per house in Affordable Project;
- b. Other Centres : Upto carpet area of 90 sq.mtrs. per house in Affordable Project;
- c. Carpet area definition to be adopted as per RERA

- 4) **MONETARY POLICY LINKED BANK INTEREST RATE** : RBI needs to push Banks, NBFCs & HFCs to compulsorily pass on the rate cut benefits in line with that of RBI

- 5) **HOME LOANS TO BE BELOW 7%** : Home Loans are made available at 7% and below, with specific attention to the SEPs. Special emphasis on lending for those properties where the cost of flat is less than Rs.20 lakhs, in the Mofussil and the far-out areas of MMR.

Representation on GST for Real Estate Sector :

1. GST rates on other than affordable housing units:

For new projects commenced on or after 1.4.2019 and ongoing projects as on 31.3.2019 opted for paying tax at new rates, on account of loss of ITC, the prices of such units have gone up by 2-3%. Hence it is recommended that New GST rates on other than affordable housing units should be reduced by 2% from 5% to 3%.

2. GST rates on Construction Contractors/ Sub Contractors :

It is recommended that the GST rates on the sub contracts/composite supply of works contract pertaining to affordable houses shall also be reduced @ 12%. **Alternatively** for the purposes of determining the rate chargeable on such inward supplies, the definition of affordable houses should be linked with Clause xvi of paragraph 4 of notification no.11/2017-CT(R) dated 28.06.2017 as amended vide notification no.3/2019-CT (R) dated 29.03.2019.

3. Affordable Housing cost in MMR :

The cost of house of 60 sq. mt. in MMR area will always be above Rs. 45 lakhs due to high land prices. None of such house in MMR area will qualify for concession rate of 1% for affordable house. This makes the relief illusory for citizens of this area.

It is therefore recommended that the value cap limit of Rs. 45 lakhs should be eliminated from the definition of Affordable Houses. Alternatively, in the definition of Affordable Houses as defined under clause xvi of paragraph 4 of notification no.11/2017-CT(R) dated 28.06.2017 as amended vide notification no.3/2019-CT (R) dated 29.03.2019, the value cap of Rs.45 lacs and area cap of 60 sqmt/90 sqmt should be made mutually exclusive. **Alternatively**, to qualify for affordable house, the value cap limit be raised from Rs.45 lacs to Rs. 1 crore for Mumbai City and Mumbai Suburbs (MCGM Limits) and to Rs. 75 lacs for Thane and the rest of MMR.

4. Unutilised GST credit with Developers

There is significant unutilized GST input credit available to developers under the second proviso to clause (i) to clauses (i, ia, ib, ic, id) of serial no.3 of notification no.11/2017-CT(R) dated 28.06.2017 as amended vide notification no.3/2019-CT (R) dated 29.03.2019 for offset against future sales / GST liability. Therefore, it is recommended that the developers should be allowed to offset such input credit against the GST liability after 1.4.19.

The accumulated credit is readily available in the GST returns of the developers.

5. ITC of GST on inward supplies pertaining to construction of commercial buildings for leasing/renting:

The units in commercial buildings are sold on outright basis and/or given on lease/rental for several years. The developers are liable to pay GST on both these

activities i.e. sale as well as leasing/renting of commercial units. Therefore, they should be entitled for ITC of GST on inward supplies since it is used for purpose of providing taxable supplies. While there is no ambiguity with regards to entitlement to ITC of GST on inward supplies pertaining to units sold liable to GST, however due to varied interpretation of Section 17(5)(d) ambiguity exists on entitlement to ITC of GST on inward supplies pertaining to units leased/rented liable to GST.

To avoid any ambiguity/confusion/litigation and double taxation under the GST regime, it is recommended to clarify that the developers are entitled to ITC of GST on inward supplies so far as they are used for providing taxable supplies whether by sale or by lease/rent etc.

DIRECT TAXATION : BUDGET EXPECTATIONS

1. Section 80 IBA

- a. The following portion of Section 80IBA should be deleted-

“Where the approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing was first approved by the Competent Authority.’

- b. 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.
- c. It is also suggested that the validity of above provisions should be extended to projects sanctioned on or before 31st March, 2024.
- d. 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.

2. Section 54F : Exemption from Capital Gains in case of investment in residential house

- a. The exemption for investment of sale proceeds in the additional residential property (other than the existing limit of one property) should be provided and necessary amendment should be made in the Act.

3. Section 24 (b) : Deduction of housing loan interest

- a. It is suggested that, in case of individuals, the interest in respect of first self-occupied property should be allowed without any limit.
- b. Alternatively, the limit for deduction of interest should be increased to INR 10,00,000 in respect of the self-occupied property.

4. Section 71(3A) - Deduction of loss under the head Income from House Property in respect of interest on house property loan

- a. The provisions of section 71(3A) should be deleted with retrospective effect.

- b. 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.
5. Section 80C : Deduction for Principal Repayment of Housing Loan / Cost of first Self Occupied House Property
- a. 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.
- b. Alternatively, the deduction for principal repayment of housing loan can be considered for a separate or standalone exemption.
6. Allow merger / amalgamation of developer firms under the same Proprietor / Parent Company
- a. In cases where the majority share holding and / or the proprietor remains one and the same, while promoting such mergers / amalgamations, the stamp duty should be reduced and such onetime mergers / amalgamations should be exempted from capital gains tax. This will not only help the small to mid size developers, but would also unlock a huge development potential that the merged firms would be able to undertake.
- b. The following are prayers of CREDAI-MCHI:
- Cap the stamp duty on such mergers / amalgamations to a maximum of Rs.10,00,000/- in the state of Maharashtra.
 - To provide exemption from capital gains tax on such onetime mergers / amalgamations.

We hereby request you to please give us an appointment for detailed discussion. Even if we cannot meet, please instruct the concerned officer to do the needful.

Thanking you,

Your sincerely,
For CREDAI-MCHI



Nayan A. Shah
President



Bandish Ajmera
Hon. Secretary



Sanjiv S. Chaudhary MRICS
Chief Operating Officer

N.B: The detailed Notes justifying the above request are enclosed herewith.

OTHER SUGGESTIONS

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
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)			
	<ul style="list-style-type: none"> Section 2(47) defines transfer of a capital asset to include, <i>inter-alia</i>, 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'. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Provisions of Section 45(5A) of the Act should be made applicable to all the assessee's 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 area share or revenue share. 	<ul style="list-style-type: none"> 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			
	<ul style="list-style-type: none"> Union Budget 2017 has introduced sub- 	<ul style="list-style-type: none"> Taxation event is shifted. However, 	<ul style="list-style-type: none"> The period of holding for the immovable property for JDA transaction ought to 	<ul style="list-style-type: none"> JDA has evolved as an efficient and effective model for

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	<p>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 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.</p>	<p>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.</p> <ul style="list-style-type: none"> • 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 from the date of transfer. 	<p>be calculated upto the date of issuance of completion certificate.</p> <ul style="list-style-type: none"> • 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. 	<p>the sector. It will contribute in achieving the government's vision of 'Housing for All by 2022'.</p> <ul style="list-style-type: none"> • This would bring certainty and better clarify on applicability of amended provisions of Section 45(5A) of the Act.
<p>Section 2(31)</p> <p>JDA considered as an Association of Persons</p>	<ul style="list-style-type: none"> • Defines 'person' to include an AOP • AOP is not separately defined 	<ul style="list-style-type: none"> • Currently, there does not exist any provision for specifically 	<ul style="list-style-type: none"> • It is recommended that suitable instructions/guidelines/rules be issued for the tax treatment of JDAs after 	<ul style="list-style-type: none"> • Recent tax uncertainties in JDA transactions has been a deterrent for the parties to enter into

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('AOP')	<p>in the Income-tax Act, 1961</p> <ul style="list-style-type: none"> The interpretation of the term 'AOP' is based on the principles laid down by the decisions of courts and tribunals 	<p>governing the taxation of JDAs.</p> <ul style="list-style-type: none"> 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. 	<p>obtaining the comments from the stakeholders with specific clarification that a JDA transaction will not be regarded as AOP.</p>	<p>such transactions, which has, inter alia, impacted the cost of housing units to home purchasers.</p> <ul style="list-style-type: none"> Thus, providing clarity on the JDA transactions can go a long way in catering to housing needs.
Deductibility of Expenditure				
<p>Section 94B</p> <p>Thin Capitalisation provisions</p>	<ul style="list-style-type: none"> 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. 	<p>This would result in huge disallowance in the hands of Real Estate Developer on account of interest expense.</p> <ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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. 	<p>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.</p>

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		would be eligible to utilized the said interest.		
<p>Section 14A of the Act & Rule 8D of Income Tax Rules, 1962</p> <p>Expenditure in relation to income not includible in total income</p>	<ul style="list-style-type: none"> 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). 	<ul style="list-style-type: none"> 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 of Rule 8D far exceeds the total expenses. 	<ul style="list-style-type: none"> No disallowance of interest and administrative expenditure in real estate sector where: <ul style="list-style-type: none"> 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 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. 	<ul style="list-style-type: none"> 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. <p>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 therefore, leads to a kind of double taxation and hence, should not be made.</p>
Deemed Taxation				
<p>Section 43CA and Section 50C</p> <p>Deemed taxation</p>	<ul style="list-style-type: none"> Section 43CA, inserted by the Finance Act, 2013 (on lines as Section 	<ul style="list-style-type: none"> Section 43CA (like section 50C) is similar to section 	<ul style="list-style-type: none"> It is recommended that the applicability of provisions of section 43CA should be done away with in case of 	<ul style="list-style-type: none"> Guideline value is being fixed by States to augment their revenue without

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based on stamp duty valuation for business assets	50C) deeming stamp duty value as full value of consideration for transfer of immoveable asset, other than a capital asset.	<p>52(2) withdrawn earlier due to Supreme Court decision in KP Varghese case (131 ITR 597).</p> <ul style="list-style-type: none"> 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. 	<p>real estate developers.</p> <ul style="list-style-type: none"> 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. 	<p>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.</p> <ul style="list-style-type: none"> 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.
Mergers and Acquisition provisions to Rescue Stalled Projects				
Section 72A	<ul style="list-style-type: none"> Section 72A allows carry forward and set off of business losses of the amalgamating company (being 'industrial 	<ul style="list-style-type: none"> There is an apprehension among the real estate developers as to whether real estate qualifies as "industrial 	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> The need of the hour from the home purchaser point of view is to allow financially stronger firms to rescue delayed or stalled projects.

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	<p>undertaking') in the hands of amalgamated company, subject to certain conditions prescribed under Section 72A(2).</p> <ul style="list-style-type: none"> 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. 	<p>undertaking". This has posed major hurdle for consolidation in this sector.</p> <ul style="list-style-type: none"> Again, the conditions of section 72A (2), which apply only to amalgamation (and not demerger), restricts consolidation of businesses. 	<p>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.</p>	<ul style="list-style-type: none"> 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

<p>Applicability of ICDS IV for revenue recognition</p>	<ul style="list-style-type: none"> 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 No. 10 dated 23 March 2017 but not notified yet. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> ICDS for Real Estate Transactions should be prescribed, considering comments provided by stakeholders at the earliest. 	<ul style="list-style-type: none"> This would bring better clarity, certainty and reduce possible litigation at future date.
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