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Deepak Goradia
Boman R. Irani
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Nainesh Shah

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I.A.S. (Retd.)

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MCHI-CREDAI UNITS
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MCHI - CREDAI

Ref. No. : MCHI/PRES/15-16/178 **January 29, 2016**

To,
Hon'ble Smt Sushma Swaraj
Minister of External Affairs
Government of India,
New Delhi – 110011.

Sub: MCHI-CREDAI's Pre- Budget Memorandum on Direct & Indirect Tax

Respected Madam,

MCHI-CREDAI is an apex body consisting of members from Real Estate Industry among Mumbai Metropolitan Region (MMR) in State of Maharashtra. The focus of our Chamber is not only to provide Affordable Housing to buyers but also, is for meditating and negotiating with Central and State Governments for the purpose of Policy making and growing Economy for the State, through Real Estate sector.

Please find attached herewith MCHI-CREDAI's Pre-Budget Memorandum on Direct & Indirect Tax for your kind consideration and intervention.

Thanking you.

Yours faithfully,
For MCHI-CREDAI

Dharmesh Jain	**Nainesh Shah**	**S. S. Hussain (I.A.S. Retd)**
President	Hon. Secretary	Chief Exec. Officer

Encl : As Above

Representations before
The Finance Minister on Tax Proposals for the Real Estate Sector

DIRECT TAX

October 2015

Part I – Revenue Impacting Aspects

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Income-tax Act, 1961				
Provisions relating to Real Estate Developers				
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	• Section 2(47) defines transfer to include, inter alia, transaction of allowing possession of immovable property 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'.	• Under a JDA, significant uncertainty exists on the point of accrual of capital gains in the hands of the land owner. • Recently, there have been certain tribunal and court decisions that have held to the effect that the capital gain accrues at the time of entering the JDA, issuing the General Power of Attorney to the developer and giving the possession of the land. • In cases involving sharing of revenue/constructed area with the land owner, the land owner is taxed at the time of entering JDA etc., as stated above, whereas he	• Suitable amendments be brought in Sections 45, 2(47) and 28 so as to provide that in a JDA wherein the land owner is to be given revenue or constructed area share, the same shall be taxed at the time such revenue accrues to the developer and payable to the land owner or the possession of constructed area is handed over to the land owner, as the case may be. • The above principles should thus be applied irrespective of whether the land owner owns the land as capital asset or business asset.	• JDA has evolved as an efficient and effective model for real estate developers to conduct real estate development projects in a faster and cost effective way. • On the other hand, it also provides the required flexibility to the land owner of reaping benefits of developmental appreciation in value of the property, without full-fledged involvement in the construction activities. • This creates a win-win situation and helps the real estate developmental activity happen at a much faster rate, which helps meeting the trailing supply to the

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income)		does not have any cash flow to pay the amount of taxes based thereon.		real estate demand in the country. It will also contribute in achieving the government's vision of 'Housing for All by 2022'. • In order to bring in certainty to real estate taxpayers, and to not have the land owners put in undue hardships of requiring to pay large taxes without there being any cash flows available; these amendments will provide the much required relief and can proliferate the pace of real estate development. • It will also avoid enormous amount of litigation between the taxpayers and the government and create goodwill for the pro-active approach taken by the government. • The amendment, if brought in, shall be neutral for the government, except the timing difference; the impact whereof will be offset by the huge cost saving that it will have in avoiding the litigation on that front as stated above.
Section 2(31)	• Defines 'person' to include an	• Currently, there does not exist any provision to specifically	• It is recommended that a Clarificatory amendment be made	• JDA is a win-win model for land owners and developers to conduct

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
JDA considered as an Association of Persons ('AOP')	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	governing the taxation of JDAs • Varied tax positions are taken by Revenue Authorities in respect of JDA, in the hands of both the parties concerned (i.e. Developer and Land Owner), including treating the JDA as an AOP. • Most of the times, such uncertainty in tax position and also multiple levies of taxes result in an increase in the price of the residential unit for the ultimate buyer.	to provide that a JDA will not be regarded as an AOP. • It is recommended that suitable instructions/guidelines/rules be issued for the tax treatment of JDAs after obtaining the comments from the stakeholders.	development in an effective and faster manner; which helps the country narrow the demand-supply gap in real estate in a swift manner. It will also contribute in achieving the government's vision of 'Housing for All by 2022'. • Recent tax uncertainties in JDA transactions has been a deterrent for the parties to enter into such transactions, which has, inter alia, impacted the overall pace of real estate development in the country; further impacting to the trailing supply against the increasing demand thereof; • Thus, providing clarity in the fiscal law on the JDA transactions can go a long way in reviving the real estate developmental activities through the JDA structure and provide the much required supply thereof to meet the increasing housing demand.
Section 43CA and Section 50C	• Section 43CA, inserted by the Finance Act, 2013 (on lines as section 50C) provides for considering the stamp duty	• Section 43CA (like section 50C) is similar to section 52(2) withdrawn earlier due to Supreme Court decision in KP	• It is recommended that the applicability of provisions of section 43CA should be done away with in case of real estate	• Guideline value is not fixed in a scientific manner by the State Government authorities. • Guideline value is fixed for a

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Deemed taxation based on stamp duty valuation for business assets	valuation as full value of consideration for transfer of immoveable asset, other than a capital asset.	Varghese case (131 ITR 597); • Section 43CA applies to real estate developers in respect of the properties sold in the course of business; • Given the recent difficult economic conditions, the stocks have piled up to an all-time high, due to which the real estate developers may sell them at prices below the concerned stamp duty prices; • The developers are thus required to pay taxes on notional difference, being the amount they have not actually earned/received; • The concept of real income thus gets affected and business income gets computed on basis of notional figure. • 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	developers. • Any suspected understatement of consideration should be tackled by investigation mechanism and not by such an amendment. • 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 as is proved by the assessee before the tax authorities, and there should be provision for reference to the Valuation Officer in case the assessee claims that the stamp duty valuation exceeds the fair market value of the property. • **Similarly, provisions of section 50C should be done away with. Alternatively, similar amendments should be made to section 50C of the Act as well.**	particular survey number or division number encompassing several properties whose market value can never be the same. • Guideline value is periodically increased in some States even though there is no corresponding increase in the market value. • On the other hand, the property prices react to 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. • The price of different units of the same property also varies due to various factors like available view, wind direction, spiritual beliefs etc. These factors are not adequately considered in stamp duty valuation. Therefore, a developer may take a call to follow differential pricing as long as he is making profits in totality. • Even under Chapter XXC, guideline value never influenced

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
				the decision to purchase any property as the Appropriate Authority always appreciated that market value is different from guideline value. • Guideline value is one of the indicative factors but not conclusive as to the fair market value of a property. • Reference to Valuation Officer and the value so estimated, even if provided for, can be subject matter of prolonged litigation without ultimate increase in revenue.
Section 35AD Inclusion of all housing projects, weighted deduction on land cost and other suggestions	• Section 35AD provides for investment linked incentives, inter alia, for notified slum re-development or re-habilitation projects and affordable housing projects. • Moreover, for notified affordable housing projects, a weighted deduction of 150% of the capital expenditure is allowed.	• Though deduction/weighted deduction is allowed on the capital expenditure on redevelopment/affordable housing projects; the developers do not get any large benefit as they do not incur any major capital expenditure, because the entire land and construction costs is on revenue account for them. • No specific provision exist in Section 35AD for allowance of claim to amalgamated/demerged company or transferee company,	• A weighted deduction of 150% on cost of land may be allowed to notified redevelopment projects and affordable housing projects. • Specific provisions should be made for allowance of benefit to the amalgamated/resulting company in case of amalgamation/demerger, as well as to the transferee company in case the project is transferred before completion (to the extent of cost incurred by the transferor company).	• In view of the housing shortage in the country and the mission of 'Housing for All by 2022', the allowance of weighted deduction of land cost will provide the required incentive to the developers (as the basic land cost is even otherwise tax deductible) and consequently, boost the housing activity in the country. • In cases of merger/hive-off or transfer of eligible projects, the succeeding company should not

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
		in case of amalgamation/demerger/transfer before the project is completed.		lose the benefit.
Section 80-IA(4)(iii) Extension of benefit period to Industrial Parks	• The Section provides tax benefit, inter alia, to any undertaking which develops or develops and operates or maintains and operates an Industrial Park which is notified up to 31 March 2011, in accordance with the Industrial Parks Scheme.	• The Industrial Parks Scheme ('IPS), 2002 was applicable till 31 March 2006 and the IPS, 2008 was notified on 8 January 2008 to be applicable from 1 April 2006 to 31 March 2009. Hence, during the interim period viz. 1 April 2006 to 31 March 2008, there was no notification for Industrial Parks, and the applications made during this period are pending approval. • One of the criteria to claim the benefit is that the number of units in the Industrial Park should not be less than 30. • Benefits available only on completion of projects.	• The benefit of section 80-IA (4) (iii) should be extended to Industrial Parks notified till 31 March 2018. • All pending applications made under the IPS 2002 during the period between the end of IPS 2002 and notification of IPS 2008 i.e. between 1 April 2006 to 8 January 2008, should be cleared as per the provisions of IPS 2002 and should be covered within the extension of the benefit under section 80-IA (4) (iii), as stated hereinabove. • There should not be any restriction on the minimum number of units to be developed in the Industrial Park. • The benefit should be allowed on part completion of project also.	• Companies in service sector need to be given incentives in view of the employment generation ability of this sector. Moreover, as rental cost forms a significant expenditure of IT/ BPO business, there is an urgent need to give incentives in view of competition from global peers. In view of these, the tax benefit to Industrial Parks should be extended. • In absence of any notification between 1 April 2006 and 8 January 2008, the applications made during such period under the IPS 2002 should be cleared under that scheme rather than applying the new IPS 2008 retrospectively even to applications pending on the date on which the new Scheme was notified, which causes undue hardships to such applicants. • Since large areas are occupied by the individual industrial companies, the condition of minimum number

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
				of units is not viable and should be done away with. • As stated, currently the tax benefits are available to the tax payers only after completion of the projects. However, the developers start earning income from the projects even when the projects are part complete and a portion of the project is being let out.
Section 115JB MAT on SEZ Developers and SEZ units MAT on Infrastructure Companies	• Currently MAT is levied on both SEZ Developers as well as SEZ Units. • It is also levied on the Infrastructure Companies.	• The levy of MAT on SEZ Developers and units has stalled the process of SEZ development in the country. • Further, the levy of MAT on Infrastructure Companies also offsets the benefit available under the normal provisions of the Act as the companies end up paying MAT on their Book Profits.	• Suitable amendments to be made to provide exemption from MAT on SEZ Developers as well as SEZ Units. • Further, the MAT exemption should also be granted to Infrastructure Companies.	• The Finance Minister has been committed to the revival of SEZs and the Infrastructure of the Country. • The amendment to provide MAT exemption to SEZ Developers and SEZ Units will boost the SEZ sector and result in revival of the same. • The amendment to provide MAT exemption to Infrastructure Companies will also result in growth of the economy with rapid investments in infrastructure development. • It will also encourage foreign investments in the infrastructure

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
				space and ultimately result in urbanization etc.
Section 80-IA Extension of benefit period to Integrated Township	• The Section provides tax benefit, *inter alia*, to any undertaking which develops or develops and operates or maintains and operates an Infrastructure Facility.	• The development or development and operating, or maintenance and operating of Integrated Township is not included in the definition of Infrastructure Facility. • Integrated Township involves development of residential, educational, medical, commercial, institutional facilities etc. • It also involves various infrastructure facilities such as roads, water supply, drainage system, sanitation, electric supply etc. • These projects involve huge investments and also have longer gestation period.	• The benefit of section 80-IA should be extended to Integrated Township by including the same within the definition of Infrastructure Facility.	• There is a huge shortage for housing facilities. • Considering the vision of 'Housing for All by 2022', if the deduction under section 80-IA is extended to Integrated Township, it will motivate the Real Estate Developers to develop and promote large integrated townships. • It will also boost the development of Infrastructure Facilities like roads, sanitation facilities, educational and medical facilities etc. related to the Integrated Townships.
Section 194IA	• Introduced vide Finance Act, 2013 requiring TDS by the transferee of an immovable property, on consideration exceeding INR 50 lacs for such immoveable property, out of the	• Real estate developers sell immoveable property in the routine course of their business and the buyers thereof are predominantly individuals who do not have the knowledge,	• The provisions of section 194IA should be done away with in case of sale of properties for all transactions. • **In any case, the provisions of**	• Will relieve assessees of the administrative hassles of obtaining and collating manual TDS Certificates and producing the same before the tax authorities along with proof of payment, so as

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
	amount credited/paid to the transferor. • Such transferee is not required to obtain Tax Deduction Account Number • The TDS Certificate is required to be issued in Form 16B in manual form	wherewithal and infrastructure to deduct tax at source and conduct the required compliances; • The issuance of TDS Certificate in Form 16B is to be manual and is difficult to collate and obtain the credit. • It locks the cash flow of already cash starved developers sitting on stockpiles and incurring losses.	**section 194IA should be done away with in case of sale of properties by real estate developers.**	to get the credit thereof. • Drastic administrative work of the tax authorities will be saved, in terms of verifying the manual tax deduction and payment thereof of so many customers with voluminous transactions. • The country has come a long way in establishing and streamlining the online system of payment of taxes and related compliances; and this will avoid taking us back to the mammoth tasks required to be conducted with respect to TDS in the manual era. • In any case, the exchequer is not be impacted as the developers have the PAN and conduct the require compliances including filing of return of income and payment of taxes as applicable. • Will save the real estate developers of the cash outflow on account of the TDS, in this difficult times; coupled with the aspects of administrative difficulties as stated above.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
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).	• In case of a real estate company, multiple projects are carried out through SPVs which are held by an Investment company. • In a situation of a closely held Investment company it is common knowledge that the administrative expenses are nominal as compared to the value of the investments. • Further, in case of a real estate holding/ investment company, the SPVs held by such companies are funded out of borrowed funds. • The investment/holding company incurs significant amount of interest cost and the same is being disallowed by the tax authorities citing that the said funds have been invested in equity earning dividends which is an exempt source. • In such cases, the amount to be disallowed applying the formula of Rule 8D far exceeds the total expenses.	• It is recommended that no disallowance of interest and administrative expenditure should be made in the case of real estate holding/investment companies. • If at all disallowance has to be made, then there should be a cap of a maximum of 5% of the total administrative expenditure of such company or the amount of exempt income actually earned/received, whichever is lower	• The real estate developers are required to enter different kinds of arrangement with different land owners to carry out the real estate development thereon. Also, the investors generally analyze and invest in specific projects rather than the entity. • Due to the above, the real estate developers are required to have separate legal/tax entities as Special Purpose Vehicles ('SPVs') for each project/group of projects. • In cases where such investments are made through the company structure, the provisions of section 14A are applied in case of the holding/investing company, which invests in the project companies; and disallowances therein are made though the monies are used for the purpose of conducting the real estate construction and development project. • The above causes undue hardships to the real estate developers though the monies are used for the business i.e. real estate projects,

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
		• No exemption to the recipient though income is received after payment of Dividend Distribution Tax.		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 therefore, leads to a kind of double taxation and hence, should not be made.
Section 72A	• Section 72A allows carry forward and set off of business losses of the amalgamating company in the hands of amalgamated company, subject to certain conditions. • The section applies only to a company owning, inter alia, an 'industrial undertaking'. • There are other conditions required to be fulfilled by the amalgamating company and amalgamated company, provided in section 72A (2) (like losses/depreciation being unabsorbed for at least three	• 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, which can otherwise improve industry performance and can help revive the sector.	• In order to overcome these genuine difficulties in case of amalgamation, and 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.	• These amendments 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.

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	years and holding assets on the amalgamation date upto ¾ of the book value of fixed assets held two years prior to the said date); so as to have the amalgamated company entitled for carry forward and set off of loss of the amalgamating company. • 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.			
Section 22	• Provides for taxation of house property owned on the Annual Letting Value ('ALV'), on notional basis, even if no rent is actually received; • Such provisions are not applicable to property occupied for the purpose of any business carried on by the assessee;	• The Honourable Delhi High Court has, in the case of CIT vs. Ansal Housing Finance and Leasing Co. Ltd. (2013) 354 ITR 180, upheld the view that the ALV in respect of the unsold flats held by the real estate developers is liable to tax on notional basis under the head 'Income from House Property', though no rent is actually earned/received.	• It is suggested that Clarificatory amendment be made to provide that tax on notional basis shall not be levied on the flats/premises held by real estate developers as stock in trade in the course of their businesses.	• The real estate developers construct flats in the course of their business and all of them do not get sold in one stroke or in one year; • They are thus required to hold, though they do not want to, till the time they eventually find buyers for the same; • Taxing on notional basis to real estate developer in respect of ALV of such unsold flats required to be

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
		• Such unsold flats are not considered to have been occupied by the assessee for the purpose of business carried by him		held in the course of business; is not within the spirit and the intention of law to tax notional income on stock held in the ordinary course of business.
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 also to 36 months, 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 36 months	• The very idea of having compulsory listing of REIT/InvIT is to create liquidity to encourage mobilizing small savings into the real estate/infrastructure sector. A larger holding periodicity to qualify as long term capital asset can discourage investors thereby impacting the very success of REIT/InvIT. • As the REIT/InvIT units are to be mandatorily listed, and the other benefits of listed equity shares are extended to be given to REIT/InvIT units by way of amendments to other relevant sections, this benefit of holding of 12 months period to qualify as 'long term capital asset' should also be provided for REIT/InvIT units.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
				• The said impact of amendment to units of REIT/InvIT seems to be unintentional as the REIT/InvIT units, to be mandatorily listed, are otherwise extended the same benefits as those of listed equity shares.
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 (such taxation deferred till the time of transfer of such units) • The notional gain arising on such transfer of shares of SPV in exchange of units of REIT/InVIT is also exempted from Minimum Alternate Tax (‘MAT’)	• Similar amendments not provided for transfer of the concerned asset directly to the REIT/InvIT • This can lead to taxation at the time of exchange of property against units, while there is no cash flow available. It can also lead to avoidable litigation.	• Suitable amendments should be introduced so as to exempt the transfer of asset being immovable property directly to the REIT /InvIT from tax, at the time of such exchange. • Amendment should also be made to exempt the levy of MAT from transfer of shares of SPVs and properties to REIT/InvIT on exchange. • Further, 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 or through the 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, and takes away flexibility provided under the SEBI Regulations. • Therefore, the fiscal provisions should extend a level playing field to both forms of holding allowed under the SEBI Regulations.
Section 115-O	• The dividend distributed by an SPV is subject to Dividend Distribution Tax (‘DDT’)	• REIT may become ineffective if distribution of dividend by SPV to REIT/InvIT is subjected to	• Suitable amendments to be made to provide exemption from DDT on dividends to be distributed by an	• The amendment will make the REIT more effective and will encourage the Real Estate Players

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
DDT on dividend distributed by an SPV		DDT	SPV	to go for REIT.
Section 79 Non-allowance of carry forward and set off of losses in case of transfer of shares of closely held companies	• 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 the tax burden, it is as good as cash flow of the tax involved therein for business; • This therefore becomes an important consideration for businesses to decide on whether to float a REIT/InvIT and the lapse of losses can hamper the proliferation of REITs/InvITs • Also, since the transfer of assets to REIT/InvIT is based on the regulatory/fiscal convenience provided by the government to mobilize savings and provide liquidity to debt laden and cash strapped developers; the same is clearly outside the objective with which section 79 was introduced viz. to discourage trading of private companies with tax losses.
Section 71B	• Provides for carry forward and	• In case of REIT, the leased	• Suitable amendments should be	• As the entitlement to set off past

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
	set off of losses under the head 'Income from House Property'	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.	made so as 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.	years losses reduces the tax burden, it is as good as cash flow of the tax involved therein for business. • This therefore becomes an important consideration for businesses to decide on whether to float a REIT and the inability to offset losses can hamper the proliferation of REITs. • 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.
Provisions relating to Individuals				
Section 24 (b) Deduction of housing loan interest	• Present limit for deduction of interest against "Rental income" under section 24(b) is INR 200,000 for self-occupied property. • However, there is a condition in the aforesaid section that the above deduction is allowable if the construction is completed within 3 years from the end of financial year in which the	• The home-buyer borrower lose the benefit of interest claim entirely, if the under-construction property bought by him is not completed within 3 years from the end of financial year in which the borrowing was made. • Further, home-buyers also lose on the benefit of interest claim which exceeds INR 200,000 despite of actual payment of the	• The condition for completion of construction within 3 years from the end of financial year of borrowing u/s.24 (b) should be done away with. • It is also suggested that, in case of individuals, the interest in respect of first self-occupied property should be allowed without any limit. • Further, the general limit for	• Considering the objective of section 24(b) to allow the interest deduction on self-occupied property, and the fact that the delay in completion of construction projects is not on the home-buyer's account; the condition of entitlement to interest claim subject to completion of project within 3 years from the end of financial year of borrowing should

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
	capital was borrowed.	interest, causing hardship to the individual home-buyers.	deduction of interest under section 24(b) should be increased to INR 300,000 in respect of the self-occupied property other than first self-occupied property.	be done away with. • Further, increase in interest deduction will encourage the home-buyers to invest in the real estate and increase the demand in the market. • It will also assist to fulfill the vision of the government of 'Housing for All by 2022'
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 100,000 • Further, the above deduction is clubbed with other tax saving instruments	• The ceiling of INR 100,000 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 the individuals in respect of the cost of their first self-occupied house property upto INR 5,000,000. The said deduction could be spread over a period of 5 years. • Further, the deduction under section 80C for principal repayment of housing loan should be increased from the existing limit of INR 100,000. • 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 the real estate and increase the demand in the market. • It will also assist to fulfill the vision of the government of 'Housing for All by 2022'.
Section 54F	• The Finance Act, 2014	• Prior to the said amendment,	• The exemption for investment of	• The amendment will encourage the

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Exemption from Capital Gains in case of investment in residential house	amended the section 54F to restrict the exemption only for investment in one residential house within India.	there were judicial precedents which allowed the exemption for investment in more than one residential house. • Restriction of exemption for investment in only one residential house results into undue hardship to the assessees even in the cases where the investment in residential house is genuine.	sale proceeds in the additional residential property (other than the existing one property) should be provided and necessary amendment should be made in the Act.	home-buyers to invest in the real estate and increase the demand in the market. • It will also in a way assist to fulfill the vision of the government of 'Housing for All by 2022'.

Representations before
The Finance Minister on Tax Proposals for the Real Estate Sector

INDIRECT TAX

Part II – Revenue impacting aspects

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Section 66E (a) – Renting of immovable property is a declared service	• As per the current regime 'Renting of immovable property' is defined under declared service and liable to service tax • No credit of Service tax on construction activity is available against output Service tax liability on renting of immovable property service.	Service tax on renting and Credit of Service tax on construction activity against output service tax liability on renting of immovable property service	• If at all, the government continues to levy service tax on 'renting' , we recommend that: - Interest and penalty for the past period should be waived considering that the matter has been a subject matter of varied interpretation and litigation. - Either credit of input taxes against payment of output service tax on renting should be allowed OR in case the credit is not allowed, service tax should be levied at a lower rate or on a lower value (by prescribing suitable abatements) to negate the cascading effect of taxes. • It is recommended that credit of input Service tax paid on construction service should be allowed against Service tax liability on renting of immovable property service or	Not allowing credit leads to cascading of taxes.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
			any other service	
New provision suggested (Section 65B(44) – Definition of service)	• Development rights denote various rights associated with the land. Taxability of development rights has not been clarified under the current regime • Circular No. 151 /2 /2012-ST dated 10 February, 2012, issued in the context of erstwhile law, clarified that sale of land by the landowner is not a taxable service	Service tax on 'Transfer of development rights'	It is recommended that a suitable clarification should be issued to provide that the transfer of development rights would not attract Service tax	• Under the current regime, the definitio of service specifically excludes an activity which constitutes merely a transfer of title in immovable property • Transfer of development rights would not be liable to Service tax as transfer o development rights is considered as transfer of the title in an immovable property to the developer • Further, transfer of development rights is a State subject and the land owner is required to pay Stamp duty on such transfers depending upon the State specific legislation. To illustrate, in the State of Karnataka, transfer of development rights attract Stamp Duty as the definition of immovable propert includes development rights

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
New Provision suggested	• Service tax on PLC and ECS has not been clarified under Negative list regime • PLC and ECS of units in a residential complex or a commercial complex is a feature as all units cannot be similarly situated • As per the erstwhile law, Service Tax was levied as a separate service on builders for providing preferential location of the complex on extra charges • Service tax was charged on full value without the benefit of abatement provided under notification 1/2006 as in case of other services like commercial construction and construction of residential complex service	Service tax on 'Preferential Location' (PLC) and 'Equal Car Space' (ECS)	It is recommended that a suitable clarification should be issued to the effect that benefit of abatement would be applicable to all incidental charges such as PLC, ECS etc which are naturally bundled, irrespective whether or not such charges are shown separately on the invoice	• Any payment for PLC and ECS feature are in fact only a payment towards an inbuilt element of the value of the property. Stamp duty as such is also paid on the gross value of the sale amount of the transaction, simply covering the aforementioned services • Service in relation to providing PLC ar ECS are inseparable from construction of residential complex service. As per the industry practice, these services are provided as a bundled service along with construction activity. Hence, the services should be considered as naturally bundled service and be considered as construction service

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Section 65B(41) – Definition of renting	• Under the stamp duty law, long term leasing of vacant land (say for 99 years) is treated at par with conveyance and the same attracts stamp duty • Separately, the definition of 'renting' includes leasing, licensing or other similar arrangements. • CESTAT, New Delhi in the case of NOIDA v. Commissioner Of Central Excise and Service Tax [2014 (1) TMI 1203 CESTAT-New Delhi], held that leasing of a vacant land for construction of a building is a taxable service post 1 July 2010	Service tax on long term lease of land	It is recommended that the definition of 'renting' provided under service tax law should be suitably amended to exclude long term lease of a period more than the threshold period, so that genuine long term lease transaction does not get covered under the taxable service head renting of 'immovable property', and double taxation can be avoided	• Since the definition of renting does not provide any reference to the tenure for which the leasing is made, even long term lease of land may get included in the purview of service tax • In such case, while on one hand, the long term lease of land would amount t conveyance of immovable property, on the other hand, it may also attract service tax

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
New Provision suggested (Erstwhile regime - Circular No. 334/1/2010-TRU dated 26 February 2010)	• Under the current regime, no exclusion/ exemption towards the External Development Charges (EDC) and Internal Development Charges (IDC) collected by Developer has been provided from the levy of Service tax • Under the erstwhile regime, Departmental Circular No. 334/1/2010-TRU dated 26 February 2010 clarified that, "Development charges, to the extent they are paid to the State Government or local bodies, would be excluded from the taxable value…". Thus, under the erstwhile regime, EDC and IDC to the extent they were paid to the State Government/ local bodies were specifically excluded and were not liable to Service tax	Service tax on EDC/ IDC	It is recommended that a suitable clarification/ notification should be issued to provide that EDC/ IDC are exempted from Service tax	• EDC and IDC are collected on actual o behalf of the Government and are not for providing any service, hence no Service tax should be applicable on suc charges • The intention of the erstwhile law should continues to apply under the current regime as well and Service tax should not be applicable where the charges are collected on actual