NAREDCO

NATIONAL REAL ESTATE DEVELOPMENT COUNCIL

PRE – BUDGET MEMORANDUM FOR 2018-2019

A1. INCENTIVE FOR HOUSING DEVELOPMENT TO TAKE ECONOMY OUT OF DEPRESSION

1. Rationalisation of GST for real estate.

(a) Sale of Real Estate to be implemented in 5% GST Slab.

Previously, the sale of under construction real estate (which is on the basis of considering it as a Works Contract) was subject to both Service tax and VAT. The Service tax law allowed an abatement of 70% on the total agreement value (where such value includes land value). Thus, Service tax was applicable @ 15% on 30% of the agreement value, making the effective Service tax burden only 4.5%. As against this, Input Credit was available for set-off. The abatement was primarily for land value included in the total agreement value.

On the VAT side, the States typically provided two ways of taxation in case of real estate construction contracts. Either the land value is included in the total taxable value which was then taxed at a very low rate or VAT was levied on the value after providing for standard deduction towards the value of land and labour. For instance, Maharashtra imposed VAT at 1% on the agreement value that included land value. Many other States such as Haryana, Delhi and U.P. provided for exclusion of land either on the basis of circle rate or as a notional percentage of total contract value. Effectively, on VAT side a substantial value of about 75% was reduced from the agreement value towards the land value. As against this, general Works Contract rate of VAT was around 5% which was brought down to 1% due to land value being included in the agreement value.

Thus, in the aggregate previously Service tax and VAT was about 5.5% of the agreement value. Both under Service tax law and

VAT law, there was no levy of Service tax and VAT for sales after completion of the project.

Under GST, general rate for Works Contract is 18%, however, for sale of under construction real estate deduction for land value is provided @ one-third of the sale value. Therefore, on account of land value, the GST rate is reduced from 18% to 12% which effectively results in an abatement of about 33%. Compared to this, previously the abatement both under Service tax law and VAT law was 70% to 75%. This has clearly resulted in a worse of situation under GST compared to the previous law by halving the abatement from 70% to 33%.

The following table illustrates the point:

Sale Price Rs	50,000	10,000	5,000
Area of Flat	1,000	1,000	1,000
Sale Value Rs	5,00,00,000	1,00,00,000	50,00,000
Land Value as % of Sale Price	50%	30%	20%
Value of Land Rs	2,50,00,000	30,00,000	10,00,000
Value Excluding Land Rs	2,50,00,000	70,00,000	40,00,000
12% GST on Total Value Rs	60,00,000	12,00,000	6,00,000
Effective Rate value Excl Land	24%	20%	16%
18% GST on Value Excl Land Rs	45,00,000	12,60,000	7,20,000

Suggested Amendment

It will be seen that where the land value component is high, GST @ 12% on total value is higher compared to GST @ 18% on the value excluding land. Either the guidance value of land be allowed as a deduction from the sale price or the rate of GST be reduced from 12% to a rate closer to 6%.

Another consequence of such an abatement is that in projects where the land value is higher than 33% of the sale value of the property than effectively the sale of land suffers GST although in

GST law, there cannot be GST on sale of land. The constitutional validity of this needs to be examined.

Under the previous Service tax law and VAT, there was a saving of 5.5% for any purchaser if the purchase was after completion of the project. However, under GST such saving will be higher at 12% which means effectively during construction period there will not be any sales as every purchaser would look to save 12% GST by purchasing after completion of the project. This will wipe out the market for under construction project which will have adverse repercussions for everyone.

For smaller value flats also, the GST burden on a consumer is higher compared to the cumulative effect of VAT and Service Tax under the erstwhile regime. This is illustrated in the Table below:

GST on Real Estate Sale Vis-a- Vis, VAT/Service Tax

GST Regime	**Premises- 1**	**Premises-2**	**Premises-3**	
Sale Price - Rs	15,000	10,000	5,000	
GST @12%	1,800	1,200	600	
Construction Cost -Rs	4,500	3,500	2,500	
Average GST Input Cost (16% on Cost)	720	560	400	
Tax on Consumer under GST after full ITC	**1,080**	**640**	**200**	**A**
Earlier Indirect Tax Regime				
VAT and Service Tax impact on Sale Price under old regime (Average 5.5%)	825	550	275	
Less: Input Credit of Service Tax only since VAT was composition tax (Average 3% of Sale Price)	450	300	150	
Tax Borne by Consumer	**375**	**250**	**125**	**B**
Difference in Tax under GST (A-B)	705	390	75	
% difference on Sale Price	4.70%	3.90%	1.50%	

Suggested Amendment

The GST rate for sale of under construction real estate should be not more than 6% on the agreement value which will make it comparable to the previous situation. Given below is an example showing the GST liability together with passing on of the Input Credit. In any building construction, the ratio between cost of material and labour + works contract is 4:6. Considering the same given below is an estimated GST as part of Input costs

Particulars	**Ratio**	**Applicable GST rate**
Cement and RMC (goods)	1.2	28%
Steel (goods)	1.2	18%
Marble / Granite / Tiles (goods)	0.8	28%
Miscellaneous materials (goods)	0.8	18%
Cost of labour + Works Contract (services)	6.0	18%

Thus, the average GST as a percentage of constructions cost will be 20%. On one hand, the Input Credit is 20% of the construction costs while the Output liability is 12% of the sale price. Therefore, the Output GST liability although at a lower percentage is on a higher value while Input GST percentage is on a lower amount of cost of constructions. This would not result in any higher set off which will ultimately lead to higher GST liability as compared to the previous ST and VAT liability.

(b) Input Credit of Construction against output of Renting

Under commercial construction, property (building) is constructed by the developer/ builder as business asset. The building or units in the building are then given on rent to lessee or tenants who could be service providers, retailers, hoteliers, theatres or hospitals, to name a few, all of which are businesses which generate employment and contribute to the growth of economy and GDP.

Under GST, goods and services acquired by the developer for property construction will be subject to GST. Under the GST Law, any lease or letting out of immovable property will be deemed to be service. Section 15(1) of the GST Act provides that the value of a supply of goods and/or services shall be the transaction value i.e. the price actually paid or payable for the supply of goods and/or services. GST, thus, will be applicable on the rentals collected from tenants at the rate of 18%. However, under Section 17(5)(d), Input Credit for construction of an immovable property is not allowed. It is pertinent to note that without the construction of immovable property there can be no renting of it. As far as the point that there is no GST in respect of a completed building is concerned, renting of commercial immovable property is made liable to GST and such renting is possible only of a completed commercial immovable property. In other words, on one hand, GST is sought to be levied on a completed commercial immovable property renting but Input Credit on such construction is disallowed possibly on the presumption that after completion of construction there is no GST applicable.

Suggested Amendment

Since renting is sought to be made liable to GST, all Input Credit should be permissible without it being disallowed. In any case, due to anti-profiteering provisions, there cannot be a case of unjust enrichment. The fundamental objective of bringing in a reform like GST is to eliminate the current anomalies in taxation that lead to cascading of taxes and distortions in the system. The enhanced cost burden due to restriction on input tax credit will have a ripple effect on the total cost of construction of the property and will escalate the project costs. Moreover, high rate of GST on inputs/input services will have an adverse impact on the working capital of the company especially at the time when the industry is struggling and has been witnessing a deceleration in growth.

One of the primary objectives behind the introduction of GST is to enable seamless flow of input tax credit across the value chain. The property, as stated above, is constructed for the

business purposes and given on lease also for business purposes. Thus, these transactions are B2B transactions where there must be seamless flow of credit across supply chain. The additional costs on account of blocked credit will be crippling for the industry.

(c) Resale of flats before completion / occupation

Sale of flats during construction stage prior to completion is liable to GST. Thus, the entire sale price paid in instalments is subjected to GST. It generally happens that a flat purchaser may book a flat, make part payment and may want to resale the flat prior to its completion. Due to legal requirements the agreement for resale would also include terms and conditions that it is transfer of benefit of the agreement which the first flat purchaser has made with the Builder. Under GST law, only sale of land and/or building is not liable to GST. But for the legal requirements of drafting the resale agreement, such an agreement is nothing but an agreement for sale of land and/or building. It is pertinent to note that, due to such resale, no part of the sale price between the Builder and the first flat purchaser would escape GST.

Suggested Amendment

A suitable clarification to the effect that such resale should not be liable to GST will help in avoiding any other interpretation that may cause hardship.

(d) Joint Development Agreements

Under the Service Tax regime, the department had issued clarifications relating to the Valuation Methodology and the Time of Supply in relation to projects undertaken by Real Estate Developers under what is popularly known as Joint Development Agreements, whereunder the land owner is provided a certain area developed by the Developer in consideration for the grant of development rights of the land meant for free sale by the Developer. The GST law and rules has not made provisions for determination of the time of supply and the value thereof by the Developer to the landowner.

Suggested Amendment

Strictly speaking, the value that the Developer passes on to the landowner is the actual amount spent by him on the construction of the area delivered free of cost. However, the type of construction, the amenities provided, the period it takes to construct, etc. may make this value unacceptable in all circumstances. Therefore, the safer approach is to adopt the guidance value of the land for stamp duty purposes, relatable to the area of land permitted by the landowner against which he receives the constructed area. As regards the timing of supply, usually the agreement between the developer and the landowner would have provisions for the date of transfer of the rights to the land. That date should be the determinative date of supply.

It is urged that clear rules be laid down to avoid any ambiguity, taking industry suggestions into account.

(e) Transfer of Development Rights

Under Transfer of Development Rights (TDR) is a benefit derived from land and such transfer of development right should be excluded from definition of Service under Sec 29102) of CGST Act.

Suggested Amendment

Strictly TDR may be included in Schedule III (i.e) activity neither supply of Goods and / or Services or specifically included in Notification No 9 (i.e) exemption Notification of GST.

(f) Cancellation of Flat Booking

(a) In case a person booked flat in Service tax regime and also paid service tax but cancels his booking in GST regime then the developer be permitted to refund service tax to flat buyer and also be given facility to adjust the service tax in GST liability.

(b)In case a person books flat in GST regime and cancels his booking in GST regime then the developer be permitted to refund GST to the flat buyer without any time limit and also be given facility to adjust the service tax in GST liability. Transfer of Development Rights (TDR) is a benefit derived from land and such transfer of development right should be excluded from definition of Service under Sec 29102) of CGST Act.

(g) Transfer of Immovable property by way of long lease GST implications

The Builder would acquire land on long term lease for the purpose of development. Builder would construct a building on that land and offer to give the constructed units on a long term lease of say 99 years for a consideration which is a lump sum amount of premium. The Builder, under the lease document, would transfer all the rights such as right to sub lease, transfer, assign, mortgage, etc. to the lessee. Stamp Duty laws in various states consider such long term leases which are for a period of more than 30 years as equivalent to sale/transfer of title of immovable property.

Mostly, in all the cases where the state government/statutory body/government company allots land to any party, it is always by way of a long lease say for 99 years by charging an upfront premium. Moreover, the economic interest and all the rights are transferred under such long lease save and except the reversionary interest (which is the residuary ownership rights and the right to receive rent, if any). The owner would not be capable of exercising any rights with respect to such land given on lease as all the rights are with the lessee. Thus, except of the ‘form’ of transfer being called lease, it is virtual transfer of title. In along lease, even if the ownership is continued with the lessor, it is merely titular.

Suggested Amendment

Under the exemption made available under GST (item 58), only premium charged for any lease of 30 years or more to any Industrial Unit for Industrial Plots is exempt. Similar exemption needs to be extended for any one (whether Industrial Unit or not) and for any purpose (whether Industrial Plot or not), as acquiring land on long lease is one of the well-known recognized methods of acquisition of land.

(h) <u>Transfer of immovable property by way of Assignment of Lease / grant of Development rights</u>

Under GST law, in Schedule III, item 5, sale of land and sale of building (in the case of building after its completion) is exempt as it is considered neither as supply of goods nor as supply of services.

Under the previous Service Tax law, transfer of title of any immovable property is a carve-out from the definition of Service and hence not liable to Service Tax. Moreover, under the previous Service Tax law, any service is defined to be an 'activity' carried out by a person for another. However, under GST law, 'services' is defined to be anything other than goods. The point being that the concept of an activity in order for it be a service is absent in the GST law. In law, title can be in different forms such as freehold title, leasehold title, etc. One of the means of acquisition of land is acquiring the leasehold interest of any Lessee in the land by way of an Assignment of Lease such that all the rights of the Lessee are transferred in favour of the Assignee. Therefore, Assignment of Lease is considered transfer of title and not liable to Service Tax.

Suggested Amendment

Assignment of an existing lease by one Lessee to another (Assignee) would not amount to an activity and would amount to a transfer of title and therefore should be exempt under GST on the same basis as sale of land is exempt. It is a well-

recognized fact that transactions for transfer of land take place under various forms such as sale of land or lease of land or assignment of an existing lease of land or grant of development rights in respect of a land. It is also well-recognized in law that property is a bundle of rights whereby the property can be transacted by transfer of any or all rights. Development right is one of the constituent of such a bundle of rights. Therefore, a transaction of grant of development rights would be similar to a transaction of transfer of land. Accordingly, any transaction of grant of development rights also needs to be exempted under GST on the basis of the exemption granted for sale of land.

(i) <u>Rentals</u>

GST payable on rental income is 18% which is considered high.

Suggestion:
It is suggested that GST on rental income be brought in 12% slab.

2. Section 80-IBA (Deductions in respect of profits and gains from housing projects)

New section 80-IBA, inserted by Finance Act 2016, wef 01.04.2017, specifies that the profits and gains derived from the business of developing and building housing projects comprising housing units of 30 sqmtr carpet area in cities of Chennai, Delhi, Kolkata or Mumbai and 60 sqmtr carpet area at any other place, shall be allowed a deduction of an amount equal to hundred percent of the profits and gains derived from such business, subject to certain other provisions of the section.

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.

Suggestions

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 of 4 and 3 percent for income group upto Rs. 12 lakh and Rs. 18 lakh per annum, respectively.

It is also suggested that the validity of above provision should be extended to projects sanctioned on or before 31st March 2019, as for 30 and 60 sq mtr carpet area houses covered under 80IBA.

3. Section 80C

Section 80 C allows deduction up to Rs. 1.5 lakh from annual income on consolidated payments or deposits specified in sub section (2) which interalia includes payments on purchase or construction of a residential house property through installment or part payments or repayment of amount borrowed from Govt. / Banks and stamp duty, registration fee and other expenses for the purpose of transfer.

As sub section (2) caters for payments on account of numerous essential savings such as Pension, Provident Fund, Insurance etc, there is no or very little scope left under this section to accommodate payments of principal amount borrowed for purchase or construction of a residential house.

Suggestion

It is suggested that the sealing of Rs. 1.5 lakh u/s 80C be increased to Rs. 2.5 lakh and Rs. 1 lakh out of it be exclusively reserved for payment of principal borrowed for the purchase of a residential house. This will help in boosting housing stock. A separate limit for payment towards purchase of a house or repayment of principal on housing loan was available earlier u/s 88.

4. Section 24 (Deduction from income from house property)

Under Sec. 24(b), deduction on account of interest payment on housing loans is permissible to owners of rented dwelling units to the fullest extent. In case of owner occupied houses the limit is set at Rs. 2 lakh. Also, the deduction is available after acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed.

Suggestions

It is suggested that the deduction on account of interest payment available under section 24 should be made applicable from the year in which capital was borrowed as for principal u/s 80C and should be to the extent of full interest paid, at least in respect of one house. In case this is not agreed, at least the limit of Rs. 2 lakh should be raised to Rs. 3 lakh for owner occupied houses. Also, five years period for acquisition / completion from the year of borrowing should be dispensed with. This will provide much needed impetus to housing sector which is reeling under huge housing shortage and relief to consumers, in view of delayed projects due to cash flow.

5. Section 23 (5) - notional income for house property held as stock-in-trade

Section 23 (5) proposes that in respect of unsold property held as stock in trade and not let out, the annual value of the property for the period upto one year from the end of the financial year in which completion certificate is received from competent authority will be taken as Nil. Thereafter, it will be assessable as income from property on the basis of its notional rent.

This provision is very harsh and will create genuine hardship to real estate developers who are facing tremendous pressure in the ongoing sluggish market. Real estate industry is already struggling with large unsold inventories. Taxing notional rent after one year from the end of the financial year in which completion certificate is received from competent authority will lead to severe financial implications for the developer/industry.

Suggestion

It is suggested that the entities engaged in real estate business should be exempted from the burden of tax on notional rent income.

In case above is not possible, the period of 1 year should be extended to at least 5 years or Govt. may give credit for tax paid on notional income at the time of actual sale of property.

6. Section 54 (Capital Gain from sale of house property)

At present, capital gain arising from transfer of any capital asset, being buildings or lands appurtenant thereto, and being a residential house, is exempt from tax in cases where the sale proceeds are invested in acquiring/constructing of one residential house anywhere in India. Such a restriction is deterrent to the objective of boosting the housing stock, and hence needs to be repealed.

Suggestion

To overcome the huge housing shortage in the country, the restriction imposed on investment of sale proceed on acquiring one residential house should be removed and scope broadened to exempt capital gain tax if the sale proceed is invested in housing activities to create one or more housing stock.

7. Section 194-IA (Payment on transfer of certain immovable property other than agricultural land)

Section 194-IA inserted by Finance Act 2013 makes transferee liable to deduct TDS at the rate of one percent of the value of consideration paid to transferor and deposit in Govt. treasury, where value of consideration exceeds Rs. fifty lakh. No TAN is required to be obtained and TDS certificate is required to be issued manually in form 16B.

Suggestion

This is big deterrent in promoting housing for all and will impact middle income segment hard. Housing cost varies from cities to cities and Rs. fifty lakh is not sufficient to meet the cost of average residential unit in Metros and tier I cities. Looking at huge shortages in housing stock for all categories, it is suggested that the provision under section 194I-A be done away with, at least for primary market.

8. Section 45(5A) - Capital gains in case of joint development agreement

Section 45 (5A) proposes that in the case of an assessee being Individual or HUF entering in to Joint agreement for development of a project, Capital gains will be changeable to tax in the previous year when competent authority issues certificate of completion for the whole/ part of the project. This proposal is introduced with the intention to mitigate the undue hardship which the owner may face in payment of upfront capital gain tax.

The proposal does not cover land owner holding the properties in name of company, firm, LLP etc.

Suggestion

It is suggested that this provision may be extended to all types of entities.

9. Section 43CA (Special provision for full value of consideration for transfer of assets other than capital assets in certain cases)

Section 43CA, inserted by Finance Act 2013, on lines of Section 50C, provides for considering valuation assessed or assessable by any authority of State Govt. for the purpose of payment of Stamp Duty as the value of consideration received or accruing as a result of transfer of an asset being land or building or both, by the assessee.

Stamp duty is generally calculated on valuation of asset based on circle rate fixed by State Govts, which are in many cases higher than the market value or the value negotiated between seller and buyer. This makes seller and buyer both liable to pay tax on notional gain / profit under the provisions of sections 43CA, 50C and 56(2)(vii)(b), making the case of double taxation.

Further, Section 43CA does not take into consideration the normal practice of land assembly adopted by developer in India, in view of Land Ceiling Act, which prevents land assembly by one entity beyond certain limit.

Suggestion

In all fairness the actual sale value should only be the basis for computing tax on profit and gain from land and building assets and not the notional income. In real terms, the provision u/s 43CA will create lot of harassment to the real estate developers and may become big deterrent.

In view of the above, it is suggested that the section 43CA be dropped all together. In case it is not possible to agree to the above, primary market transactions should at least be kept out of its purview.

10. Real Estate Stressed Assets

Real estate performance between the period 2000 - 2008 was good because of robust demand, which inspired developers to invest lavishly in land acquisitions for future business requirements. Consequent to global economic breakdown in 2008, Indian economy, resilient initially, also weakened and cycle reversed after 2008 because of weakening economy globally. High inflation, in Indian context, was additional factor, which made lending expensive. Demonetisation of Rs. 1000 and Rs. 500 notes in 2016 and implementation of GST and RERA in 2017 have also impacted real estate considerably.

Consequently, there is severe shortage of liquidity and slow down, leading to delays in projects completions. In certain cases, projects have even got stalled or abandoned. Investors and consumers, who had invested, are now feeling insecure and frustrated and knocking the doors of courts for relief. Developers, despite their best intentions, are unable to complete the projects in absence of cash flow.

In the National interest, it is, therefore, imperative that Govt. and financial institutions should step forward and retrieve the stressed/stalled projects, albeit with proper safeguards for money invested.

Suggestions

a) **Create a National Fund to finance delayed/stalled projects.**
b) **Restructure old project loans for a year or two.**
c) **Sanction start up loans equal to 10-15 percent of project cost to kick start delayed/stalled projects and to revive private investments.**
d) **Bring down mortgage interest rates to incentivise public to invest in housing.**
e) **Return of land allotted by Govt., where work has not started, for cash in the hand of developers to improve their liquidity to complete ongoing projects.**

Hand holding by Govt. is necessary, at this stage, to boost country economy.

11. Incentivise for Rental Housing to meet Housing for All commitment by 2022.

In view of the housing shortage in the country and the objective 'Housing for All by 2022' and in view of the fact that all cannot afford ownership housing, we need to give a big boost to 'Rental Housing'. **The following incentives are suggested (for companies / partnership / HUF / Individuals):-**

a) **Income from renting of housing properties be taxed at a flat rate of 10%.**

b) **Provision of rental housing on a large scale will require the services of Property Management Firms. In order to make property management a viable activity, income of firms which are wholly engaged in maintenance / repair and other specified management services for rental housing blocks may be brought within the ambit of Section 80 IB (10) or Section 10 (23G).**

c) **High cost of houses and high property taxes lead to a low rate of return (ROR) from rental housing making renting out an un-remunerative proposition. To improve the effective ROR from renting, it is suggested that the deduction from rental income under Section 24(a) be increased from 30% to 50%. This will promote rental housing. For women and Senior Citizen, the deduction could be 100%, keeping social requirements and empowerment of women in view.**

12. **Priority Sector lending limit for home loans to be increased**

Priority Sector lending to be extended for home loans up to Rs 35 lakh for medium cities, Rs. 50 lakh for metropolitan cities and Rs. 75 lakh for mega cities, to provide relief to MIG category.

13. Section 71 – Transitional Provisions for set off of loss under the head Income from house property

The existing provisions of Section 71 relate to set-off of loss from one head against income from another. Sub-section (3A), inserted by Finance Act 2017 wef 01-04-2018, provides that set-off of loss under the head "Income from house property" against any other head of income shall be restricted to two lakh rupees for any assessment year.

This provision will lead to negative sentiments amongst the investors in real estate sector and will hamper growth of real estate industry.

Suggestion

It is suggested that setting off of full loss be allowed as in the past.

A2 FUNDS FOR HOUSING

1. Dedicated Affordable Housing Fund.

Finance Bill 2013 had created Rural and Urban Housing Funds and Rs. 4,000 crore and Rs. 2,000 crore respectively were allocated in 2013-14. Rs. 8,000 and Rs. 4,000 crore were added to these funds in 2014-15. It is meant to mitigate huge shortages of housing in rural and urban areas. Govt. must create a strong financial support system by increasing allocations to this fund and simplify lending procedures as also meaningfully engage private sector to overcome housing shortages in the country, especially for poor. **This fund could also be used to help stressed assets.**

2. Access to Pension, Insurance and PF Funds.

Housing Finance is a long-term investment and asset liability mis-match is a major problem for housing finance companies. Access to long-term funds such as Provident, Insurance and Pension funds will ease the situation.

All developing countries have access to the long term funds for Housing and infrastructure development. The asset -liability mismatch between short term borrowings and long term lending can be obviated. USA and Singapore are classic examples where fund flows from these sectors have helped increase financial resource flows with long tenor and cheaper funds.

Investment in HFIs should be an eligible investment for pension funds, Insurance funds and Provident Funds.

3. Access to Bank Incremental Deposits.

In order to improve affordable housing finance for the low and middle income groups, it is important that housing finance should be made available at cheaper rates. For that it is important that housing finance companies get low cost funds. **It is, therefore, suggested that banks**

may increase their allocation for housing from the present 3% to 5% of their incremental deposit. The additional 2% incremental allocation may be earmarked strictly for affordable housing projects only.

4. Real Estate Investment Trust (REIT).

SEBI has already launched InvITs and REIT and these have become recognized pooling / investment vehicles. World over, REIT have been very effective instrument and source for funding housing projects because of various fiscal concessions and incentives provided by various Govts. to REIT units and the shareholders.

To promote InvITs and REITs, we suggest following-

Treatment equivalent to listed entities

(a) <u>Holding period for units of business trust to qualify as long-term capital asset should be reduced to 12 months from 36 months [Section 2(42A)]</u>

Currently, for listed shares and units of equity oriented funds, the holding period for being classified as a long-term capital asset is a period of more than 12 months. Further, long-term capital gains arising on sale of listed shares and units of equity oriented funds are exempt from tax, provided the following conditions are satisfied:

(a) The transaction of sale is entered into on or after 1 October 2004; and

(b) The transaction of sale is subject to securities transaction tax ("STT").

Finance Act (No 2), 2014, extended the above exemption to long-term capital gains arising on sale of units of business trusts. Further, the STT provisions have been amended to bring sale of units of business trusts within the purview of STT. Therefore, to that extent, the provision dealing with taxability of long-term capital gains arising on sale of units of business trusts have been aligned with those for listed shares and units of equity oriented funds. However, the period of holding for units of business trust to qualify as long-term capital asset is still more than 36 months, and has not been brought in line with the period of holding for listed shares and units of equity oriented funds.

Units of business trusts are treated by the market as equity-like instruments. Furthermore, units of business trusts are expected to be listed on the equity segment of the stock exchanges. It is also pertinent to note that the memorandum explaining the provisions of Finance Bill (No 2), 2014, stated that the capital gains on sale of units of business trusts will be given the same tax benefits as shares of a company. The relevant extract is reproduced below:

"The listed units of a business trust, when traded on a recognised stock exchange, would attract same levy of securities transaction tax (STT), and would be given the same tax benefits in respect of taxability of capital gains as equity shares of a company i.e., long term capital gains, would be exempt and short term capital gains would be taxable at the rate of 15%." (emphasis supplied)

It is also pertinent to note that the memorandum explaining the provisions of Financial Bill (No 2), 2014 stated that the shorter period of holding of more than 12 months was introduced for encouraging investment on stock market where prices of securities are market determined. Accordingly, the period of holding for qualifying as long-term capital asset in case of securities which are not traded on a stock marked i.e. unlisted securities and units of a mutual fund (other than equity oriented mutual funds) was increased from more than 12 months to more than 36 months vide Finance Act (No 2), 2014. Since units of a business trust will be listed on the stock market and the price will be market determined, we understand that the intention should be to allow the shorter period of more than 12 months to units of business trusts as well.

In light of the above, it is proposed that, holding period for a unit of Business Trust to qualify as long term capital asset should also be more than 12 months & not more than 36 months.

Suggestion

Insert the words "or units of a business trust" in the proviso to clause (42A) of section 2 in the manner set out below:

"Provided that in the case of a security (other than unit) listed in a recognised stock exchange in India or a unit of the Unit

Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of an Equity Oriented Fund or a zero coupon bond or a unit of a business trust, the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted.”

(b) Exemption from Section 2(22)

Business Trusts may invest in a number of Holding companies/ SPVs and it is likely that there may be surplus funds available in one Holding company/ SPV which can be productively lent to another Holding company/ SPV. Considering provisions of Section 2(22)(e), such loans may have adverse tax implications. Provisions of Section 2(22)(e) do not apply to a listed company or its subsidiary. Since units of a Business Trust shall be listed and the Holding company/ SPV is its subsidiary, exemption from Section 2(22)(e) should be available to such Holding companies/ SPVs as they are available to a listed company or its subsidiary

Suggestion

Insert the following sub-section (c) to Section 2(18) to the definition of “Company in which public are substantially interested”:

“if it is a special purpose vehicle or a holding company referred to under Explanation to section 10(23FC).”

(c) Allow carry forward of losses on exchange of shares of SPV with units of REIT -Exemption from Section 79

SEBI REIT Regulations require the REITs to hold not less than 50% in the SPV. This will lead to a change in shareholding of SPV affecting 51% of its shareholding thereby attracting the provisions of Section 79 resulting in lapse of unabsorbed losses of the SPV. There is a reason to grant exemption for such change in shareholding of SPV since this is part of transfer of asset to a REIT. Moreover, the provisions of Section 79 are not applicable to a listed companies or its subsidiary. The units of a REIT are listed and the SPV is a subsidiary, hence, the exemption should be granted for such change in shareholding so that the losses of SPV do not lapse.

Suggestion

Insert the following sub-section (c) to Section 2(18) to the definition of "Company in which public are substantially interested":

"If it is a special purpose vehicle or a holding company referred to under Explanation to section 10(23FC)."

(d) **115BBDA –Dividend Tax In Hands Of Recipient**

Presently, tax @ 10% of dividend received in excess of INR 10 lakhs per annum is payable by resident individuals, HUFs and Firm. It is now proposed to extend the above provision to all except domestic company and specified charitable trusts or institutions referred to in Section 10(23C) or charitable trust or institutions registered under Section 12AA of the Act.

This exclusion provided in the provision does not cover Business Trust as referred in Section 2(13A). This effectively means that Business Trust who receives dividend income from its holding companies/ SPVs will be subject to this additional levy of 10% inspite of the fact that Business Trust is exempt from tax on such dividend income u/s 10(23FC). Since REITs and InvITs are mandated under SEBI REIT Regulations and SEBI InvIT Regulations, respectively, to distribute atleast 90% of their profits, this will adversely affect the investor yield and make REIT/ InvIT model ineffective.

Suggestion

Insert sub-clause (iv) to clause (b) of Explanation proposed to be inserted in section 115BBDA in the following manner:

"*(iv) business trust defined in clause (13A) of Section 2*

5. External Commercial Borrowing (ECB).

ECBs in housing and real estate sector except affordable housing projects upto 60 sqmtr carpet area is totally prohibited and sector placed on negative list of RBI for bank debt, thus, leaving the sector mainly to private funding. This has led to increase in cost of fund for private developers and, together with increase in land cost, properties have become unaffordable for average Indians. There being huge shortage of housing and real estate stock in country, opening of ECB in real estate sector will help reduce cost of fund and property prices. Also, opening of ECB in the development of SEZ would smoothen development of this capital intensive sector.

It is, therefore, suggested that ECBs be allowed in all spheres of housing and real estate development including SEZ projects.

A3. REGULATORY ISSUES

1. Environmental Clearance

Considering expertise available with the State Governments for examining environmental related issues, the limit of built up area should be increased from 1,50,000 sq mtr to 3,00,000 sq. mts. for granting environmental clearances by ULBs.

2. Urban Land Ceiling (ULC).

It is requested that Govt. should consider removal of section 20 and related sections and rules so that all projects stuck for last several years can get started.

3. Project Clearance by Airport Authority of India (AAI).

Large projects, considering market absorption and approval periods, are expected to stretch to over 10 to 15 years. The gross root planning of which is done on the basis of norms prevailing at the time of project approval. Reduction in height during project execution period will have adverse effect on the project and huge financial loss to developer. Hence, it is requested that height approval, once granted, should be frozen for the life period of the project i.e. till its completion.

4. Coastal Regulation Zone (CRZ) Restrictions.

Currently, CRZ rules restrict development in the first 500 to 100 mtrs. from sea / river / canals etc. The CRZ rules have also frozen the development potential of Land at 1991 levels, when the rules were notified. These should be considered for defreezing.

Further, projects in CRZ areas need approvals separately, which take 6-9 months and leads to increase in project timelines.

5. Solid Waste Management.

In March 2017, the Hon'ble High Court of Mumbai banned new real estate development permissions in the city of Mumbai, due to improper handling of solid waste generated from construction by Bombay Municipal Corporation.

Since then building plans are not being sanctioned, leading to slow pace of development.

This must be resolved.

6. Risk Weightage on Housing Loans.

RBI, vide circular no. RBI/2016-17/317 dated June 7, 2017, has rationalized LTV, Risk weight and Standard Asset Provisioning as under

Category of Loan	LTV Ratio (%)	Risk Weight (%)	Standard Asset Provisioning (%)
(a) Individual Housing Loans			
i) Upto Rs. 30 lakh	≤ 80	35	
	> 80 and ≤ 90	50	

ii) Above Rs. 30 lakh and upto Rs. 75 lakh	≤ 80	35	0.25
iii) Above Rs. 75 lakh	≤ 75	50	
(b) CRE-RH	N A	75	0.75
(c) CRE	N A	100	1.00

Risk weight in case of CRE-RH and CRE needs to be brought down.

7. Setting up of Mortgage Insurance Companies.

Setting up of Mortgage Insurance Companies under Mortgage Credit Guarantee Scheme should be speeded up to encourage secondary mortgage market.

8. Stamp Duty

In order to reduce transaction cost of housing and to discourage black money deals in housing it is important that stamp duties are reduced to 2-5 percent. Reduction in stamp duty will generate more revenue to State Govts. by increasing transactions and help in reducing cost of securitisation of housing loans.

9. Introduction of title insurance in respect of newly built properties

Title insurance is an insured statement of the conditions of title or ownership of an immovable property. This insurance can protect owner and lender against defects in title and title documents. In the event of a defect discovered in the title of the property, insurance company will compensate the owner. This insurance will offer following benefits:

i) Title insurance would be a step in curbing the black money in the economy
ii) Intending owner can be confident of the title of the property as the insurance company will carry out an extensive title search of the property.
iii) In the event of defect in title of property, the owner can be compensated by the insurance company

iv) Title insurance will encourage several NRI's and international investors in investing in Indian real estate market
v) Insurance would reduce the risk of the banker, which in-turn would lead to reduced interest rates and push in the real estate sector.

14. Industry Status to Real Estate Development.

Real Estate Development should be given special status at par to industry.

“Industry Status” will bring about major transformation in the outlook and nature of the sector. It will enthuse investments, attract large companies and most importantly inculcate corporate culture and industry discipline, which will immensely benefit economy in general and consumers in particular.

“Industry Status” will also help the sector access bank lending at average interest rates at low collateral as against high risk rates prevailing at present. Further, it will help sector access central / state subsidies in case developers are building in backward regions / north eastern regions and raise ECBs.

In any case, most industry rules and regulations are already applicable to real estate industry and denying the same for funding purposes would amount to discrimination.

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