



NAREDCO

NATIONAL REAL ESTATE DEVELOPMENT COUNCIL

PRE – BUDGET MEMORANDUM FOR 2012-2013

A1. INCENTIVE FOR HOUSING DEVELOPMENT

1. Section 80-IA (Infrastructure Status to Housing Sector)

Section 80-IA of the Income-tax Act provides that where the gross total Income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any of the business referred to in sub-section (4) then a deduction equal to 100% of the profits and gains derived from such business shall be allowed for ten consecutive assessment years.

Sub-section (4) covers the business of either (i) developing or (ii) maintaining and operating or (iii) developing, maintaining and operating any infrastructure facility which fulfills all the conditions laid down in the said section.

The Explanation in the said Sub-section defines “infrastructure facility” as under:

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;
- (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
- (d) a port, airport, inland waterway or inland port.

Housing Development companies are engaged in undertaking large scale urban development projects including purchasing raw land and developing it for the purpose of construction of houses, multi-storied buildings, creation of infrastructure and social facilities such as laying of roads, systems for water supply, water treatment, sanitation and sewerage, solid waste treatment and also to create educational, medical and recreational facilities as an integral part of development of satellite townships, in accordance with the elaborate rules and regulations and with the specific approval from the State Governments. Such projects tend to reduce the pressure on existing cities by providing low priced alternatives and value for money to the customers.

While according the approval, the State Governments specifically direct that these infrastructure facilities shall ultimately be handed over and shall not remain with the developer.

After purchasing agricultural land, these companies provide and create most of the infrastructure facilities mentioned in the Explanation.

It is only by creating all these infrastructure facilities that the raw land gets converted into developed land, fit for construction of houses and multistoried buildings for residential and commercial purposes, thus augmenting the housing stock of the nation.

It is presumed that the activities of these companies are already covered by the definition of 'infrastructure facility' but the position has become debatable as such activities are not covered by a specific clause.

Suggestion

We, therefore, suggest that in the definition of 'infrastructure facility' the following clause may also be added:

- (e) **"An integrated township and group housing development on area more than 10 acres involving provision of residential, educational, medical, community, commercial or institutional buildings and creation of required facilities including roads, water supply, water treatment, sanitation and sewerage systems and solid waste treatment and management systems"**.

This will meet the long outstanding demand of housing to be treated as infrastructure.

2. Section 80 IB (10)

Income tax deduction u/s 80IB(10) available to undertakings developing housing projects is for projects approved on or before 31st day of March, 2008. As this date has not been extended, provisions of this section will cease to exist after 31st day of March 2013.

Suggestion

Since the housing industry has not yet overcome the impact of 2008 recession and is in the grip of severe downturn as also there is huge demand of housing especially for poor pending to be fulfilled, it is suggested that provisions of section 80IB(10) be made applicable for projects sanctioned after 31st March 2008, at least till 2015. If need be, size of units could be reduced from 1000/1500 sqft to upto 1200 sqft, in line with the definition of affordable housing prescribed by the Govt.

3. Section 35AD

Deduction of capital expenditure incurred wholly and exclusively for developing and building a housing project under a scheme for slum development or rehabilitation or affordable housing framed by Central or State Govt. and notified in accordance with the guidelines prescribed is allowed u/s 35AD sub-section (5)(ac) & (5)(ad).

Definition of capital expenditure does not include land cost and building construction cost or any other significant investment in the project. As a result, developer of slum redevelopment/rehabilitation and affordable housing does not get any major advantage as far as the income tax concession is concerned.

Suggestion

It is suggested that cost of land and building construction cost should be made part of capital expenditure to incentivize developer to undertake construction of social housing.

4. Section 80C

Section 80 C allows a deduction of up to Rs. 1 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, therefore, suggested that the ceiling of Rs. 1 lakh u/s 80C be increased to Rs. 2 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.

5. Section 80 CCF

Section 80CCF allows deduction upto Rs. Twenty thousand paid or deposited as subscription to long term infrastructure bonds.

Suggestion

It is suggested that deduction u/s 80 CCF be increased to Rs. One Lakh. This will help infrastructure development.

6. Section 24

Under Sec. 24, 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. 1.5 lakh. Also, the deduction is available after acquisition or construction is completed and it should be within three years from the end of the financial year in which capital was borrowed.

Suggestion

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. 1.5 lakh should be raised to Rs. 3 lakh for owner occupied houses. Also, three 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.

7. Section 54

At present, capital gain arising from transfer of any capital asset is exempt from tax in cases where the sale proceeds are invested in acquiring one residential house. Such a restriction is a deterrent to the object of boosting the housing sector, and hence needs to be removed. **Thus, it is proposed that this restriction should be removed and the scope be broadened by allowing the exemption as long as the entire capital gain is invested, whether in one or more houses.**

A2 INCENTIVES FOR PROMOTING RENTAL HOUSING

1. Tax on Rental Income

In view of the housing shortage in the country and the objective 'Shelter for All' and in view of the fact that not all can 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 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) and 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.

2. TDS on Rental Income

Tax at source from rental income is deducted @ 15% in the case of individual and HUFs and 20% in other cases out of the gross rental income. The tax deduction at source as above is exorbitantly high because of the reasons that out of the gross rental receipts followings outgoings are deducted resulting in the excess payment of tax in many cases which is claimed as refund from the Department.

- a) House tax ranging from 20 to 30% of rateable value is levied by the Municipal Authorities in most of the metros and towns.
- b) An amount equivalent to 30% is allowed as deduction u/s 24(a) for repairs/maintenance, collection charges, insurance etc.
- c) Interest payment on the borrowed capital.

Due to above outgoings, the remnant taxable rental income works around 40% to 50% of the gross rental income where there is no claim of interest on borrowed funds. In cases where there is claim of interest on borrowings then it would be much less and in many cases it is negative. As such rate of tax deduction at source far exceeds the maximum income tax chargeable in such cases.

Suggestion

Deduction @ 15% in case of individual and HUFs and @ 20% in other cases out of gross rental income is very high and should be reduced to 7.5% in case of individuals and HUFs and 10% in other cases. This will also reduce the workload of the income tax department in processing the refund applications.

3. Deduction for Irrecoverable Rent.

In computing the house property income, certain important deductions are not allowable. Such deductions in no way can be said to have been included in statutory deductions of 30% for repairs etc. Such deductions are as under: -

- a) Ground rent being approx. 2 ½ % of the value of land. Land value in metros is very high and as such ground rent is very high.
- a) Annual value under Income-tax Act is determined by excluding the rent which the owner cannot realize. No provision u/s 24 has been made to allow deduction of irrecoverable rent which the owner has included in the annual value as rent receivable but due to circumstances beyond his control the same could not be realized. Tax having been paid on such income in earlier years,

the deduction u/s 24 should have been provided for irrecoverable rent. It may be mentioned that special provision has been made u/s 25AA and 25B to tax the unrealizable in earlier years. **Therefore, in all fairness, deduction for irrecoverable rent accounted for in earlier years should be made u/s 24 of I.T. Act.**

A3. INCENTIVE FOR HOUSING FINANCE

1. Section 36 (1) (viii)

The section allows deduction of amount **not exceeding twenty percent of the profits** derived from the business of providing long term finance (computed before making any deduction under this clause) for residential houses and **carried to Special Reserve**. This deduction used to be for by percent before 2007.

This provision enables HFCs to re-capitalise themselves as they have small capital base. Reduction in benefit will result in higher tax outgo and make the capital costly.

Suggestion

It is suggested that deduction of 40% of profit derived from business of providing long term housing finance, as applicable before 2007 budget, should be reintroduced. This will improve the thin margins of HFCs and increase their lendable resources.

2. Section 36 (1) (viia)

Provisions for bad and doubtful debts: The present section allows deduction to only banks equivalent to 10% of the value of the assets that too for doubtful and loss assets.

Housing Finance Companies as per the directions of NHB and banks as per the directions of RBI are required to make provision for bad debts ranging from 10% to 100% besides derecognition of interest. The bad and doubtful debts are of three categories. Sub-standard assets where the default is for three months, doubtful assets which have remained substandard for 1 year and loss assets where the asset has lost its realizable value.

There are two points. One the section is only applicable to banks and not to HFCs although both are making provisions and derecognising interest as per the directions of the Regulators. Secondly, the deduction is not applicable for sub-standard assets where bulk of the provision is made and interest derecognised.

The provision for bad debts and interest derecognition is done as per international norms of presenting the balance sheet in the most transparent manner. The disallowance of deduction and considering interest on bad debts on accrual basis

for the purpose of tax does not take into account the accounting concept of a Going Concern. In case the deduction is allowed and the amount is recovered in coming years then automatically that income will be offered to tax although deduction was earlier allowed. In the long term there will be no loss to the I T Department.

Suggestion

It is suggested that the Provision of this section should be extended to Housing Finance Companies like for banks and all the bad debts should be considered for deduction on provisions made and interest derecognised as per the Regulators' directions. This will go a long way for the sustained growth of the Housing sector.

3. Extension of Sec.10 (23G) to Housing Finance:

Sec.10 (23G) which exempted income from investments made by a financing company in enterprises wholly engaged in the business of developing/ Operating/Maintaining specified infrastructure facility (the definition of infrastructure facility includes housing projects) has been omitted by Finance Act 2006 wef 01-04-2007.

Suggestion

It is suggested that Section 10 (23G) be reintroduced to help Housing Finance Companies working on thin margin.

4. Section 54 EC

Capital Gains bonds under Section 54 EC allowed to NHB has been withdrawn. In view of rising cost of money for housing finance and more than 65% increase in home loan interest in last two years, it is suggested that capital gain bonds under section 54EC to NHB be reintroduced and the same extended to HUDCO as well.

A4. FUNDS FOR HOUSING

1. Dedicated Affordable Housing Fund.

Govt. should consider a Dedicated Affordable Housing Fund in line with infrastructure Fund exclusively for construction of EWS / LIG housing and lend it to developers at low rate of interest.

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

3. Assess to Bank Incremental Deposits.

In order to improve affordable housing finance for the lower and middle-income groups, it is important that housing finance be made available at cheaper rates. For that it is important that housing finance companies get low cost funds. **It is 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 canalizing it through housing finance companies registered with NHB.**

4. Real Estate Mutual Fund (REMF) / Real Estate Investment Trust (REIT).

REMF approved by SEBI should be encouraged. In addition, REITs should also be encouraged and necessary guidelines finalized at the earliest. These together will boost supply of fund to housing and real estate sector and enable equity participants reap the fruits of high yielding real estate sector.

5. External Commercial Borrowing (ECB).

ECBs in housing and real estate sector except integrated townships (ECB for integrated townships available till 31st December 2010) is totally prohibited and sector placed on negative list of RBI for bank debt, thus, leaving the sector mainly to private debts. This has led to increase in cost of fund for private developers and together with increase in land cost has made properties unaffordable to average Indians. There being huge shortages in housing and real estate stock in India, 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 help smooth development of this capital intensive sector.

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

A5. SERVICE TAX ON RESIDENTIAL CONSTRUCTION TO BE TAKEN OUT OF SERVICE TAX NET.

‘Construction of Residential Complex service’ came into effect from 16th June 2005. The taxable service was defined as “any service provided or to be provided to any person, by any other person, in relation to construction of complex”. Construction of complex” means —

- a) construction of a new residential complex or part thereof; or

- b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
- c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;

“Residential complex” means any complex comprising of —

- i. a building or buildings, having more than twelve residential units;
- ii. a common area; and
- iii. any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

- (a) “Personal use” includes permitting the complex for use as residence by another person on rent or without consideration;
- (b) “Residential unit” means a single house or a single apartment intended for use as a place of residence;

“Works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out –

1. Erection, commissioning or installation of plant, machinery, equipment or structures (whether pre-fabricated or otherwise), installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning (including relating pipe work, duct work and sheet metal work), thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire-escape staircases or elevators or
2. Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry or
3. Construction of a new residential complex or a part thereof or
4. Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (2) or (3) above or

5. Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

The services provided by any person, to any other person in relation to execution of a works contract excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams would be taxable under this head as per section 65(105)(zzzza).

Thus, the service tax provisions relating to construction services cover two types of services –

- (a) Commercial or industrial construction which is taxable w.e.f. 10-9-2004
- (b) Construction of complex (residential complex of more than 12 residential units) which is taxable w.e.f. 16-6-2005. This category of services was included in the definition of works contracts wef 1.6.2007 by amendment to Section 65(105) of Finance Act, 1994.

Composition Scheme

Works contract (Composition Scheme for Payment of Service Tax) Rules 2007 has been notified vide notification 32/2007 ST dated 22.05.2007 by the Central Government for the purpose of specifying the scheme for composition. The person executing works contract has the option to pay tax under the composition scheme at the rate of two percent on the gross amount charged for the works contract. Gross amount shall not include the VAT or sales tax paid on the goods transferred during the execution of such works contract. The option is to be exercised prior to payment of service tax in respect of the said works contract and once exercised, shall be in force till the completion of the works contract. The above rate of tax was increased in the Union Budget 2008, to 4.12% wef 1.3.2008.

Comments

10% Service Tax on residential construction, when Govt. is providing all incentives to boost housing, is like a deterrent. This combined with rise in excise duty on cement and steel would raise the unit cost by about 4 to 5 percent. Residential construction, therefore, should be taken out of service tax net in the first place. The exemption should cover the builders and developers who are registered and paying service tax under the head 'works contract service' u/s 65(105)(zzzza) of Finance Act, 1994.

If the above is not possible, at least, the rate of service tax in case of 'works contract service' should be brought down from 4% to 2% under the Composition scheme. This can be done by necessary amendment to Works contract (Composition Scheme for Payment of Service Tax) Rules 2007. This is necessary because many of the real estate companies/builders/developers who have registered themselves under works contract service after 1.6.2007 and opted for composition as permitted under law, from June 2007 did not get the benefit of

reduction in service tax rate from 12% to 10%, announced by the Government as a part of stimulus package w e f 24.2.2009. In fact, they continue to pay service tax at the rate of 4% from March 2008 to date. Such a reduction of rate under Works contract (Composition Scheme for Payment of Service Tax) Rules 2007, will reduce the final price of the product by almost 2% to customers and is necessary in order to have a level playing field with the builders following normal scheme.

A6. OTHER FISCAL AND REGULATORY ISSUES

1. Measures to down market housing finance to poorer sections of society.

Housing finance today addresses the need of only middle class population. The Banking industry and the HFCs should work out mechanism which can address the needs of poor sections as well as the rural households by subsidising interest rates, pooling funds and relaxing mortgage requirements as also through instruments such as micro financing, community pool funding, agricultural land mortgaging, annual installments for loan repayment, etc.

2. Graded scale of Grant/subsidy/loan for Social Housing

There should be graded scale of grant, subsidy and loan in such a way that lowest strata of poor get maximum subsidy and Economically Weaker Section and Low Income Group people get a combination of subsidy and affordable loan.

3. Bank Finance

Presently RBI discourages Banking System from making construction finance available to the developers. It is pertinent to note that in the absence of debt from the Banking System the developers have to depend on private sources of funding which pushes up the cost to the detriment of ultimate buyers. It is, therefore, suggested that construction finance should be made available by the Banking System to the developers. This will enable them to complete the projects faster and hand over possession to users in time.

Banks should also provide construction advances / working capitals to developers on the lines of institutional loans.

4. Farm Houses land and Agriculture land proposed for non agricultural purposes in Master Plan should be brought under the SARF AESI Act 2002 to enable Banks and HFCs to consider them as securities.

5. Housing Finance Companies may be allowed to open Saving / Current Accounts.

To reduce cost of funds, the HFCs may be permitted to open low cost deposits (Saving / Current Accounts) for their clients.

6. Risk Weightage on Housing Loans.

Risk Weightage on housing loan, as applicable now, is 50% for loans upto Rs. 30 lac with LTV less than 75% and 75% for loans above Rs. 30 lac with LTV less than 75%. For loans above Rs. 75 lac, risk weightage is 125%. For loans on commercial real estate, it is 150%. It is suggested that risk weightage on housing and commercial real estate be brought down to 50% and 100% respectively, earlier. Provisioning requirement should also be as for other industrial loans.

7. Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Bill.

The enforcement of Security Interest and Recovery of Debts Laws (Amendment) Bill, passed by Parliament in December 2004, arms HFIs and Banks in recovering dues from defaulting borrowers. The Doors of Debt Recovery Tribunal (DRT) should be opened for HFCs also to enable them to file suit with DRT.

8. 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.

9. 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.

10. Time bound incentives for first time home buyers.

Principal cost of the house upto Rs. 15 lakh may be exempted from tax over a 5 years period. This will incentivise low income group and middle income group people and help them in acquiring houses for themselves as also give an immediate boost to the economy.

11. Sale of property to NRIs to be given status of deemed export.

Sale of property to NRI should be given the status of deemed export and 100% Income Tax exemption be available to builders on income earned by sale of property to NRI and money earned in foreign exchange.

12. 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.

13. Voluntary Disclosure of Unaccounted Money

To promote social housing, amnesty for deployment of unaccounted money as one time measure for a limited period could be considered.

14. 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.

15. Foreign Exchange Management (Acquisition and transfer of immovable property in India) 2000.

a) Amendment in Section 6 (b)(ii).

The current rules permit repatriation of foreign exchange, from the sale of an immovable property subject to amount received in foreign exchange for the purposes of acquisition.

It is proposed that the repatriation should not be limited to amount invested in foreign exchange but should also include profits earned in the transaction of sale of the immovable property.

b) Amendment in Section 6 (b)(iii)

The Current rule permits repatriation of sale proceeds subject to maximum of two such houses.

It is proposed that the restriction of two houses should be removed and investor should be permitted to repatriate in respect of any number of residential units. This will help in improving housing supply.

A7. Special Economic Zone

Section 10AA of Income Tax Act 1961 exempts, from Income Tax, 100 percent of profits or gains of an entrepreneur, derived from export of articles or things or services from a Special Economic Zone (SEZ) established under SEZ Act 2005, for a period of five consecutive assessment years beginning from assessment year relevant to previous year in which the unit begins operation, and fifty percent of such profits or gains for further five assessment years and, thereafter, for the next five consecutive years, so much of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called Special Economic Zone Reinvestment Reserve Account) and to be utilized for the purpose of the business of the assessee as specified in the Act.

Section 80IAB of Income Tax Act 1961 exempts, from income tax, 100 percent of profits or gains of a developer derived from the business of developing Special Economic Zone, notified under special Economic Zone Act 2005, for ten consecutive assessment years in a block of 15 years beginning from the year in which the SEZ was notified by the Central Govt.

Budget 2011 has specified that exemption under IT Act 1961 would be available to only those SEZs which are approved on or before 31st March 2012 and begin manufacturing or producing or providing services on or before 31st March 2014. Direct Tax Code (DTC) does not cater for concessions available u/s 10AA and 80IAB. It proposes Minimum Alternate Tax (MAT) at the rate of 18.5 percent on the book profits wef 01st April 2012 on developers of SEZ and units operating from the SEZ. The SEZ developers are also required to pay Dividend Distribution Tax (DDT) at 15% post 01st June 2011.

Suggestion

As development of many SEZs has been delayed due to economic slowdown in view of rising interest rates, lack of investors and Global uncertainties, it is suggested that cutoff date for completing development of SEZs be reset to 31st March 2013 and for starting manufacturing etc to 31st March 2015.

A8. MISCELLANEOUS ISSUES

1. Incentive for Certified Green Building

Incentive in terms of 50 % reduction in Property Tax for the certified Green Buildings from recognised institutes should be provided. This will encourage End User to go for a Green Buildings. This will in turn also encourage construction of more environmentally friendly buildings and reducing Environmental Impacts with respect to Energy Consumption and Green House Gas emissions.

The incentive program should also allow a developer to apply for additional FSI of 5% if the project achieves a Green Building Certification or Rating. This should apply to all types of building projects, residential or commercial.

2. Urban Land held as stock in trade [Section 2 (ea)]

In a major change effected during April 1993, most of the assets were taken out from the levy of wealth tax except for a few items like jewellery and bullion, motor cars, boats, yachts which were excluded from such levy so long as they were held as stock in trade have been exempted from the purview of wealth tax, there is no reason for taxing urban land held by a developer as its stock in trade.

Suggestion:

Hence, we recommend that a similar exemption be granted to urban land held by an assessee as stock in trade by inclusion of the following proviso under Section 2(ea) (i) (v) after the word 'urban land':

Provided that where such urban land is held by an assessee as stock in trade, who is engaged in the development of vacant urban land in pursuance of permission granted by a competent authority of the state/central government, such land shall be deemed to be excluded from the assets specified in this sub clause.

3. The land should be made available by the Govt. agencies in different States of India for the development of residential housing projects at concessional rate. This will help in reducing cost of housing units which has shot up 50 – 100 percent in last two years.
4. The entire set up of District Town Planning (DTP) organisations should be re organized to make it simple, transparent and accountable. Archaic municipal byelaws should be redrafted to suit present day requirements and plan approvals made single window.
5. **Environment clearance for housing projects.**

All housing projects exceeding certain parameters require environmental clearance. This is a major irritant for the industry. Therefore, if the master plan of

a city / town, whenever prepared by the concerned Town Planning Department, involves environment authority at approval stage itself and clearance from them is obtained then it would be very helpful to the industry. For any Group Housing project or plotted colony project, taken up within the designated residential sector of approved / published Master Plan, further environmental clearance should not be made mandatory.

6. External Development by Govt. Agencies.

Govt. collects external development charges from the developers but external development does not keep pace with the project as a result project completion and occupation gets delayed and developers besides loosing huge amount due to delay has to cough up substantial amount on extension of licenses etc. External development should, therefore, be made time bound and completed before the completion of project by the developers. Alternatively, external development could be entrusted to developer and no EDC charged.

A9. Corporate, Minimum Alternate and Dividend Distribution Tax

1. Corporate and Minimum Alternate Tax

Corporate income tax rate in the case of domestic company has been at a level of 30% plus surcharge and education cess (effectively working out to 33.99%) for over five years now. All domestic companies are required to pay corporate tax at the rate of 33.99% on their taxable income. Apart from this, Corporates are also required to pay corporate dividend tax at the rate of 15% plus surcharge and education cess, on the amount of dividend distributed by the company.

Further, under the existing provisions of section 115JB of the Income Tax Act, a company is required to pay a Minimum Alternate Tax (MAT) on its book profit, if the income-tax payable on the total income, as computed under the Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2010, is less than such minimum. The amount of tax paid under section 115JB is allowed to be carried forward and set off against tax payable up to the tenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under the provisions of section 115JAA.

Sub-section (1) of section 115JB was amended from assessment year 2011-12 to increase the MAT rate to eighteen per cent from the existing fifteen per cent. Infact, the rate of tax was ten percent for assessment year 2009-10 and was increased to fifteen percent to remain only for one assessment year i.e 2010-11.

Comments

Effective Tax rates have to come down for ensuring better compliance and greater revenue to the exchequer. We have seen in the past that whenever there is

reduction in tax rates, the tax revenues have grown much higher. In line with this philosophy, Direct Tax code in its original draft had proposed the effective tax rate to be about 25%. It is suggested that the corporate tax rates be brought down to 25% inclusive of surcharge and education cess in the coming budget itself. This is also a long time demand of the corporates.

If it is not possible to reduce the corporate tax rates for any reasons, the surcharge and education cess be removed in the above tax rate, thereby reducing effective tax rate by about 4%. i.e Tax rate should remain at a maximum of 30% including surcharge and education cess.

Similarly, the Minimum Alternate Tax rate u/s 115 JB of Income Tax Act has increased more than double since its introduction and this rate has been subjected to changes very often at the cost of industry and tax payers. Frequent tinkering with tax rate works against the canons of taxation. It should be restored to 15% (maximum). This reduction in rate will increase the productive investments and capital formation by corporates which in turn will immensely contribute for the growth of the economy. It is important that investment related allowances such as depreciation allowance are naturally taken by the companies. Further, as a matter of principle, the MAT rate was to be 1/3rd of the normal rate and therefore there is no justification to increase this rate so rapidly.

2. Tax on distributed profits of domestic companies.

Presently, the provisions of dividend distribution tax u/s 115 O of Income Tax Act are as under:

(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of June, 1997, *but on or before the 31st day of March, 2002*, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of ten per cent . This rate was increased to 15% with effect from assessment year 2007-08. The effective tax rate works out to much higher now at almost 17%. (15% plus 7.5% surcharge and 3% education cess)

(2) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on distributed profits under sub-section (1) shall be payable by such company.

(3) The principal officer of the domestic company and the company shall be liable to pay the tax on distributed profits to the credit of the Central Government within fourteen days from the date of --

- (a) declaration of dividend; or
- (b) distribution of any dividend; or
- (c) payment of any dividend,

whichever is earliest.

(4) The tax on distributed profits so paid by the company shall be treated as the final payment of tax in respect of the amount declared, distributed or paid as dividends and no further credit therefore shall be claimed by the company or by any other person in respect of the amount of tax so paid.

(5) No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the amount which has been charged to tax under sub-section (1) or the tax thereon

Comments:

Dividend distribution tax leads to double taxation. Dividend is nothing but distribution of profits of the company. It is after paying income tax on the profits earned by the company that the profit is to be distributed among the shareholders. Dividend distribution tax is levied at this stage. The corporates are already paying tax at a very high rate of 34% and are further asked to pay the corporate dividend tax @ 16.6% on behalf of shareholders. This, in fact not only amounts to double taxation but also deprives the shareholders the usual concession in tax rate that he would otherwise enjoy for being an investor in long term capital asset(more than one year). In other words the dividend distribution tax should be totally be done away with and it should not be taxed both in the hands of company as well as in the hands of shareholders.
