CREDAI

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

DIRECT TAX

October 2016

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 income)	• 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. • There have been conflicting decisions of various courts on taxability of JDA arrangements 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 real estate demand in the country. It will also contribute in achieving the government's vision of 'Housing for All by 2022'.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
		does not have any cash flow to pay the amount of taxes based thereon.		• 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) JDA considered as an Association	• Defines 'person' to include an AOP • AOP is not separately defined in the Income-tax Act, 1961; • The interpretation of the term 'AOP' is based on the principles	• Currently, there does not exist any provision to specifically 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	• It is recommended that a Clarificatory amendment be made 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	• JDA is a win-win model for land owners and developers to conduct 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

Section	**Present Provisions**	**Issues**	**Suggestions for Amendment**	**Rationale for Amendment**
of Persons (‘AOP’)	laid down by the decisions of courts and tribunals	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.	after obtaining the comments from the stakeholders.	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 Deemed taxation based on stamp duty valuation for	• Section 43CA, inserted by the Finance Act, 2013 (on lines as section 50C) provides for considering the stamp duty valuation as full value of consideration for transfer of immoveable asset, other than a capital asset.	• Section 43CA (like section 50C) is similar to section 52(2) withdrawn earlier due to Supreme Court decision in KP Varghese case (131 ITR 597); • Section 43CA applies to real estate developers in respect of the	• It is recommended that the applicability of provisions of section 43CA should be done away with in case of real estate developers. • Any suspected understatement of consideration should be tackled by investigation mechanism and not by such an amendment.	• Guideline value is not fixed in a scientific manner by the State Government authorities. • Guideline value is fixed for a particular survey number or division number encompassing several properties whose market value can never be the same.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
business assets		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	• 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.**	• 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 the decision to purchase any property as the Appropriate Authority always appreciated that

Section	**Present Provisions**	**Issues**	**Suggestions for Amendment**	**Rationale for Amendment**
				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, in case of	• 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 lose the benefit.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
		amalgamation/demerger/transfer before the project is completed.		
Section 80-IA(4), Section 35AD and Section 80-IAB- Phasing out of Incentives	• The Finance Minister while introducing the Finance Bill, 2015, proposed to reduce the rate of corporate tax from 30 per cent to 25 per cent over the next 4 years. It was also stated that the process of reduction has to be necessarily accompanied by rationalisation and removal of various kinds of tax exemptions and incentives for corporate taxpayers, which incidentally account for a large number of tax dispute. • Further, the Finance Act, 2016 has initiated the process of phasing out of various deductions[1] and has also reduced the rate of tax in case of a domestic company to 29 percent in case where the total turnover or gross receipts in the previous year 2014-15 is less than INR 5 crores. The reduction of corporate tax of one percent is	• The Construction and Development sector has a high turnaround time / gestation period for the companies to reach a break even and start earning profits takes longer than some other industries. • For example deduction under Section 80-IA(4) of the Act dealing with development, operation and maintenance of an infrastructure facility, deduction under Section 80-IAB of the Act dealing with development of special economic zone, deduction under Section 80-IB(9)	• The process of phasing out of exemptions and deductions should not be done across sectors	• Considering the higher gestation period, there would be certain entities which would have recently commenced commercial operations, will have to tackle phasing out much faster than anticipated and planned. Thus, the phase out of deductions and exemptions should be applicable to select industries and based on long-term plans and considering a sensitivity analysis of the related industries.

[1] Section 10AA; Section35; Section 35AD; Section 35AC; Section 35CCC; Section 35CCD; Section 80IA; Section 80IB of the Act

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
	directly co-related to the company satisfying the threshold relating to turnover/gross receipts and does not seem related vis-à-vis the phase out process of deductions initiated.			
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 space and ultimately result in urbanization etc.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
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. • Both these projects involve huge investments and also have longer gestation period.	• The benefit of section 80-IA should be extended to Integrated Township Projects 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 amount credited/paid to the transferor.	• 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, wherewithal and infrastructure to	• 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 section 194IA should be done away with in case of sale of properties by real estate developers.**	• 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 to get the credit thereof.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
	• 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	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.	• **Alternatively, the provisions of section 194IA should be done away with in the case JDA arrangements, considering that generally the JDA arrangements are based on area sharing model.** • **Further, the limit of INR 50 lacs should be increased ti INR 1 crore in order to grant relief to small transactions.**	• 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 80-IBA Deduction in respect of profits and gains from Affordable Housing Projects	• Finance Act 2016 has inserted section 80-IBA which grants 100 percent exemption for affordable housing projects subject to conditions which *inter alia* include a condition that the project should be completed within 3 years from the date of approval. • However, no exemption is provided for such projects under MAT	• Even though the exemption is provided under the normal provisions of the Act, the MAT liability may still arise • This may lead to an additional tax burden and indirectly defeat the purpose of the benefit being granted to affordable housing projects. • Further, the condition of completing the project within 3 years would be a challenge and developers would need strong project management skills for the same.	• Suitable amendments should be made to provide exemptions under MAT for Affordable Housing Projects. • Further, the time limit for completion of the project should be extended to 5 years as compared to 3 years.	• Considering the vision of 'Housing for All by 2022', providing MAT exemption will encourage the developers to undertake more affordable housing projects. • Further, extending the time limit for completion of project will also bring in flexibility for the developers and the projects can be completed in an efficient manner.
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,	• It is recommended that no disallowance of interest and administrative expenditure should be made in the case of real estate holding/investment companies in the following cases- ➢ Where the owned funds are more than the total investments; ➢ Where the investment made in SPV is a strategic investment and not with an	• 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

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
		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. • No exemption to the recipient though income is received after payment of Dividend Distribution Tax.	intention to earn dividend income; ➢ Where there is no exempt income earned during the year under consideration. • 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. • Further, the 14A adjustment should not be applied while computing MAT liability.	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, 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	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
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 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	• 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.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
	allowing tax neutral restructuring and hiving off of businesses.			
Income from letting out of property as business income or Income from House Property	• Recently, the Supreme Court has held that the rental income would be taxed as 'Income from Business or Profession' where the letting or sub-letting is part of the trading operation of the assessee.	• The Supreme Court ruling though being binding on all courts may still be open to interpretations by various tax officers as well as assessees which may lead to litigations on the taxability of rental income.	• Suitable amendment must be made to provide guidelines or clarity on taxability of the rental income under which head of income viz. "Income from Business or Profession" or "Income from House Property"	• The amendment will provide clarity and reduce litigation going forward.
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. • Such unsold flats are not considered to have been occupied by the assessee for the purpose of business carried by him	• 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 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.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
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. • Further, Finance Act, 2016 amended the said holding period to 2 years	• The said amendment to section 2(42A) extends the holding period of REIT/InvIT units to 2 years, so as to qualify as 'long term capital asset'	• Suitable modifications should be made to the amendment to section 2(42A) so as allow a period of 12 months for REIT/InvIT units to qualify as long term capital asset, in place of 2 years	• 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. • 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

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
				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 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 DDT on dividend distributed by an SPV	• The dividend distributed by an SPV to REIT is exempt to Dividend Distribution Tax ('DDT') in a single level SPV structure. • The SEBI has recently approved two layer SPV structure for REIT.	• Under the two layer SPV structure, dividend will travel from SPV to Holding Company ('HoldCo') and from HoldCo to REIT. • The dividend paid by SPV to HoldCo will not enjoy the exemption under the current	• Suitable amendments to be made to provide exemption from DDT on dividends to be distributed by an SPV to HoldCo.	• The amendment will make the REIT more effective and will encourage the Real Estate Players to go for REIT.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
		taxation scheme and will be subject to DDT at the rate of 20.358%. • This will result into an additional tax cost and will have significant adverse impact on the investors return as compared to single level SPV structure.		
Section 10(23FC) Exemption on Interest received or receivable from SPV	• The interest paid or payable by an SPV to REIT is exempt from tax. • However, there is no provision providing similar exemption to interest income earned by the HoldCo from SPV under the two layer structure.	• This additional tax cost will make the structure inefficient unless there is back to back interest payout by the HoldCo.	• Suitable amendments to be made to provide exemption to interest income earned by the HoldCo from the SPV.	• The amendment will make the REIT more effective and will encourage the Real Estate Players to go for REIT.
Section 79 Non-allowance of carry forward and set off of losses in case of transfer of shares of 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

Section	**Present Provisions**	**Issues**	**Suggestions for Amendment**	**Rationale for Amendment**
				• 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 set off of losses under the head 'Income from House Property'	• In case of REIT, the leased commercial property may have huge tax losses under the head 'House Property', which can be set off only against income under that head in ensuing years. • If the leased commercial property is transferred to the REIT, then the SPV/sponsor may not be able to offset such losses as the income flow would go to the REIT.	• Suitable amendments should be 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.	• 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 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	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
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.	• Home-buyers lose on the benefit of interest claim which exceeds INR 200,000 despite of actual payment of the interest, causing hardship to the individual home-buyers.	• It is suggested that, in case of individuals, the interest in respect of first self-occupied property should be allowed without any limit. • Alternatively, the limit for deduction of interest under section 24(b) should be increased to INR 500,000 in respect of the self-occupied property.	• 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	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Section 54F Exemption from Capital Gains in case of investment in residential house	• The Finance Act, 2014 amended the section 54F to restrict the exemption only for investment in one residential house within India.	• Prior to the said amendment, 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.	• The exemption for investment of 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.	• The amendment will encourage the 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'.