



CREDAI's Submission on Tax Reforms for the Budget 2014-15

Part I – DIRECT TAX

A. Revenue Impacting Aspects

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Income-tax Act, 1961				
Section 45 r.w.s. 2(47) (in case of Joint Development Agreements ('JDA')- Point of accrual of capital gains)	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> Under a JDA, significant uncertainty exists on the point of accrual of capital gains in the hands of the land owner. Recently, there have been certain Tribunal 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 does not have any cash flow to pay the amount of taxes based thereon. 	<ul style="list-style-type: none"> Suitable amendment be brought in section 2(47) so as to provide that in a JDA wherein the land owner is to be given revenue share/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 be applied irrespective of whether the land owner owns the land as capital asset or business asset. 	<ul style="list-style-type: none"> 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 ever increasing real estate demand in the country. 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 will proliferate the pace of real

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				<p>estate development.</p> <ul style="list-style-type: none"> 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.
<p>Section 28 (in case of JDA - Point of accrual of business income)</p>	<ul style="list-style-type: none"> Section 28 enumerates the income which would be liable to tax as 'Income from Business/Profession'. 	<p>Under a JDA, significant uncertainty exists on the point of accrual as business income.</p> <p>Recently, there have been certain Tribunal decisions that have held to the effect that the business income accrues at the time of entering the JDA, issuing the General Power of Attorney to the developer and giving the possession of the land.</p> <p>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</p>	<ul style="list-style-type: none"> Suitable amendment be brought in section 28 so as to provide that in a JDA wherein the land owner is to be given revenue share/constructed area share, then 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. Alternatively, the land owner can be taxed on the basis of accrual of income following the percentage completion method, having regard 	<ul style="list-style-type: none"> 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

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		<p>does not have any cash flow to pay the amount of taxes based thereon.</p>	<p>to the extent of construction as at the concerned year end.</p>	<p>meeting the trailing supply to the ever increasing real estate demand in the country.</p> <ul style="list-style-type: none"> • 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 will 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.
<p>Section 2(31) JDA considered as</p>	<ul style="list-style-type: none"> • Defines ‘person’ so as to include an AOP • AOP is not separately defined in the Income-tax Act, 1961; 	<ul style="list-style-type: none"> • Currently, there does not exist any provision to specifically govern the taxation of JDAs • Varied tax positions are taken by Revenue Authorities in 	<ul style="list-style-type: none"> • It is recommended that a clarificatory amendment be made so as to provide that a JDA will not be regarded as an AOP. • It is recommended that suitable 	<ul style="list-style-type: none"> • 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

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<p>an Association of Persons ('AOP')</p>	<ul style="list-style-type: none"> The interpretation of the term AOP is based on the principles laid down by the decisions of courts and tribunals 	<p>respect of JDA in the hands of both the parties concerned (i.e. Developer and Land Owner), including treating the JDA as an AOP.</p> <ul style="list-style-type: none"> 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. 	<p>instructions / guidelines/rules be issued for the tax treatment of JDAs after obtaining the comments from the stakeholders.</p>	<p>gap in real estate in a swift manner;</p> <ul style="list-style-type: none"> 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 the pickup of real estate developmental activities through the JDA structure and provide the much required supply thereof to meet the increasing demand.
<p>Section 43CA Deemed taxation based on stamp duty valuation for business assets</p>	<ul style="list-style-type: none"> Section 43CA, inserted vide the last Finance Act (on lines as section 50C) provides for considering the stamp duty valuation as full value of consideration for transfer of immovable asset, other than a capital asset. 	<ul style="list-style-type: none"> 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 properties sold in the course of business; Due to the current difficult economic conditions, the 	<ul style="list-style-type: none"> It is recommended that the applicability of provisions of section 43CA should be done away with in case of real estate developers Any suspected understatement of consideration should be tackled by investigation mechanism and not by such an amendment. Alternatively, section 43CA (as well as section 50C) should not be 	<ul style="list-style-type: none"> 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. Guideline value is periodically increased in some States even though there is no corresponding

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		<p>stocks have piled up to an all time high, due to which the real estate developers sell them at prices which may be below the concerned stamp duty prices;</p> <ul style="list-style-type: none"> • 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 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 	<p>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.</p>	<p>increase in the market value.</p> <ul style="list-style-type: none"> • 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 so long in totality he is making profits. • Even under Chapter XXC, guideline value never influenced the decision to purchase any property as the Appropriate Authority always appreciated that market value is different from guideline value. • Guideline value is one of the indicative factors but not conclusive as to the fair market value of a property. • Reference to Valuation Officer and

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				the value so estimated, even if provided for, can be subject matter of prolonged litigation without ultimate increase in revenue.
<p>Section 80-IA(4)(iii)</p> <p>Extension of benefit period to Industrial Parks and SEZ</p>	<ul style="list-style-type: none"> The Section provides tax benefit to any undertaking which develops or develops and operates or maintains and operates an Industrial Park which is notified upto 31 March 2011. The Section also provides tax benefit to any undertaking which develops or develops and operates or maintains and operates a Special Economic Zone ('SEZ') notified upto 31 March 2006. 	<ul style="list-style-type: none"> One of the criteria to claim the benefit is that the number of units in the Industrial Park should not be less than 30. Benefits available only on completion of projects. 	<ul style="list-style-type: none"> The benefit should be extended to Industrial Park and SEZ notified up to 31 March 2015. Since large areas are occupied by the individual industrial companies, there should not be any restriction on the number of units. The benefit should be allowed on part completion of project also. 	<ul style="list-style-type: none"> Companies in service sector need to be given incentives in view of the employment generation ability of this sector. As rental cost forms a significant expenditure of IT/ BPO business, there is an urgent need to give incentives in view of competition from global peers. There is also a need to expedite the process of development of SEZ in the country, as the process has stalled in the last few years for several reasons. Extension of the fiscal benefit to the same can revive the developmental process. As stated, currently the tax benefits are available to the tax payers only after completion of the projects. However, the developers start earning income from the projects even when the projects are part complete and a portion of the project is being let out.

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<p>New Provision Suggested</p> <p>Tax deduction to first time home buyers</p>		<ul style="list-style-type: none"> The predominant objective of section 80IB (10) is to promote housing projects by way of giving tax benefits to the developers of low and middle class segments to be further passed on to the end consumers – this has not been too successful. No benefit available to individual tax payers apart from principal repayment under Section 80C of the Act and interest on loan 	<ul style="list-style-type: none"> Benefits made available under First Time Home Buyers Tax Credit ('FTHTC') Scheme in US, may be replicated in India in the form of tax breaks from personal taxes. For qualified homes purchased from 2013 onwards for first time home buyer, the maximum deduction can be lesser of: <ul style="list-style-type: none"> 50% of the purchase price of the house; or Maximum deduction up to: <ul style="list-style-type: none"> INR 50 lakhs for Mumbai INR 35 lakhs for Delhi, Bangalore, Chennai, Hyderabad, Pune and Kolkata INR 20 lakhs for other cities Spread over a period of 10 years for purchase of one house. The total deduction remains capped at INR 5 lakhs for a given year Alternatively, the individual home buyer should be allowed deduction of the entire amount of 	<ul style="list-style-type: none"> Real estate prices in India have sky rocketed over the last one year (i.e. post recession); hence it becomes all the more important to give certain tax benefits to the Individual tax payer Imperative to give benefits to the Indian consumers directly as a tax break from their personal taxes to encourage and promote housing for the low and middle class segment. Incentives to low income group and middle income group to help them in acquiring homes

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			<p>interest paid on the loan obtained for acquiring the house, even for self-occupied property.</p>	
<p>Section 35AD</p> <p>Inclusion of all housing projects, weighted deduction on land cost and other suggestions</p>	<ul style="list-style-type: none"> Section 35AD provides for investment linked incentives for building and operating a new hotel of two stars or above, building and operating a new hospital with at least 100 beds for patients, slum re-development or re-habilitation projects and affordable housing projects. One of the conditions for claiming the deduction of pre-commencement capital expenditure as deduction is the capitalization of such capital expenditure in the books of account on the date of commencement. 	<ul style="list-style-type: none"> In view of the rise in prices of the real estate in the last few years, not everyone can afford to own a house; hence, appropriate provisions required to encourage 'Rental Housing'. Though weighted deduction is allowed on the capital expenditure on affordable housing project; 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 provisions in Section 35AD for allowance of claim to amalgamated/demerged company or transferee company, in case of amalgamation/demerger/transfer before the project is completed The condition of capitalizing 	<ul style="list-style-type: none"> All housing related projects to be entitled to the benefits under this section. A weighted deduction of 150% on cost of land should be allowed to all real estate developers. 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). The requirement of capitalization of pre-commencement expenditure 'on the date of commencement of operations' should be related to 'capitalization after the commencement of operations'. Appropriate clarifications should be issued with respect to section 35AD (4) as to whether the 	<ul style="list-style-type: none"> In view of the housing shortage in the country and the objective of 'Shelter for All', coupled with the fact that not all can afford ownership housing; a big boost to 'Rental Housing' is required. The allowance of weighted deduction of land cost will provide the required tax benefit to the developers and consequently, boost to the proliferation of housing activity in the country. In cases of merger/hive-off or transfer of eligible projects, the succeeding company should not lose the benefit.

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		<p>the pre-commencement expenditure on the date of commencement, poses practical problems as the invoices/documents for all the pre-commencement expenditure may not have been received on the date of commencement.</p>	<p>assessee has an option to claim depreciation (or deduction under any other section) in case he does not claimed deduction u/s.35AD.</p>	
<p>Section 14A of the Act & Rule 8D of Income Tax Rules, 1962</p> <p>Expenditure in relation to income not includible in total income</p>	<ul style="list-style-type: none"> Section 14A provides for disallowance of expenditure incurred in relation to income which does not form part of the total income of the assessee (i.e. exempt income). 	<ul style="list-style-type: none"> 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. In such cases, the amount to be disallowed under the formula far exceeds the total expenses. In case of a real estate holding/investment company, the SPVs held by such companies are funded out of borrowed funds. The investment/holding company incurs significant 	<ul style="list-style-type: none"> It is recommended that no disallowance of interest and administrative expenditure should be made in the case of real estate holding/investment companies. If at all disallowance has to be made, then there should be a cap of a maximum of 5% of the total administrative expenditure of such company or the amount of exempt income actually earned/received, whichever is lower Further, what constitutes administrative expenditure needs to be defined to include only such expenses which have relevance to the activity of investment and earning income thereon. 	<ul style="list-style-type: none"> The real estate developers are required to enter different kinds of arrangement with different land owners to carry out the real estate development thereon. Also, the investors generally analyze and invest in specific projects rather than the entity. Due to the above, the real estate developers are required to have separate legal/tax entities as Special Purpose Vehicles ('SPVs') for each project/group of projects. In cases where such investments are made through the company structure, the provisions of section 14A are applied in case of the holding/investing company, which invests in the project companies; and disallowances therein are made though the monies are used for the

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		<p>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.</p> <ul style="list-style-type: none"> No exemption to recipient though income is received after payment of Dividend Distribution Tax. 		<p>purpose of conducting the real estate construction and development project.</p> <ul style="list-style-type: none"> 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 income distribution company pays the dividend distribution tax/buyback tax, apart from the corporate tax; and therefore, there is no tax leakage. Such disallowance therefore, leads to a kind of double taxation and hence, should not be made.
<p>Section 24 (b) and 80C</p> <p>Deduction for principal repayment / interest of a housing loan</p>	<ul style="list-style-type: none"> Present limit for deduction of interest against “Rental income” under section 24(b) is INR 150,000 for self occupied property. Present limit for deduction under section 80C is INR 100,000. 	<ul style="list-style-type: none"> The limits of these amounts were set about 10 years ago, and the real estate prices have gone up manifold since then; hence there is a need to increase these limits so as to match the amount of benefit to the corresponding increases in the prices and borrowings. 	<ul style="list-style-type: none"> Maximum limit u/s.24(b) should be enhanced to INR 500,000 for self occupied property In addition to the present deduction upto INR 100,000 u/s.80C, a separate limit up to INR 500,000 of deduction be permitted for repayment of principal portion of housing loan for self occupied residential property 	<ul style="list-style-type: none"> Increasing the threshold limit for the deduction would provide relief to the middle class. It shall also increase disposable income in their hands.

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Section 22	<ul style="list-style-type: none"> 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; 	<ul style="list-style-type: none"> 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 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 	<ul style="list-style-type: none"> It is suggested that calrificatory 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. 	<ul style="list-style-type: none"> 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 require 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 in the spirit and the intention of law to tax notional income from house property.
Section 194IA	<ul style="list-style-type: none"> Introduced vide last Finance Act requiring TDS by the transferee of an immovable property, on consideration exceeding INR 50 lacs for such immovable property, out of the amount credited/paid to the transferor. Such transferee is not required to obtain Tax Deduction Account Number The TDS Certificate is 	<ul style="list-style-type: none"> 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 deduct tax at source and conduct the required compliances; The issuance of TDS Certificate in Form 16B is to 	<ul style="list-style-type: none"> The provisions of section 194IA should be done away with in the case of sale of properties by real estate developers 	<ul style="list-style-type: none"> 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 below. Will relieve assesseees 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

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	<p>required to be issued in Form 16B in manual form</p>	<p>be manual and is difficult to collate and obtain the credit.</p> <ul style="list-style-type: none"> It locks the cash flow of already cash starved developers sitting on stockpiles and incurring losses. 		<p>credit thereof.</p> <ul style="list-style-type: none"> 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. We have 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.
<p>Section 43CA/50C r.w.s. 56(2)(vii)(b)</p> <p>Double Taxation</p>	<ul style="list-style-type: none"> Section 43CA/50C provides for taxation based on stamp duty valuation, where the actual consideration is lower than that; in cases of business/capital assets; Section 56(2)(vii)(b) provides, inter alia, that where 	<ul style="list-style-type: none"> In case of sale of immoveable property in an arm's length transaction, which happens to be below the stamp duty valuation (for various reasons); there will be double taxation in respect of the same amount on the same transaction in the 	<ul style="list-style-type: none"> Suitable amendment should be brought in section 56(2)(vii)(b) to exclude its applicability in the cases of immoveable property to which the provisions of section 50C/43CA are applicable. 	<ul style="list-style-type: none"> The taxation based on the stamp duty valuation is a presumptive taxation, and taxing two persons in respect of the same causes undue hardships to the assessees. This amendment will avoid taxing two persons in respect of the same amount in the same transaction for

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	<p>an individual/HUF receives any immovable property for a consideration less than the stamp duty valuation, then the difference will be taxable in his/its hands.</p>	<p>same year – firstly, in the hands of real estate developer/other seller and secondly, in the hands of the individual/HUF purchaser.</p>		<p>the same year.</p>
<p>Section 72A</p>	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> These amendments will help allow tax neutral mergers/amalgamations across industry and businesses, which can help boosting the performance through consolidations and help improve the slowed-down economic conditions in the country.

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	<p>set off of loss of the amalgamating company.</p> <ul style="list-style-type: none"> On the other hand, for a demerger, there are no such conditions required above; which is in the spirit of freely allowing tax neutral restructuring and hiving off of businesses. 			
<p>New Provisions suggested</p> <p>Taxation related to Real Estate Investment Trust ('REIT')</p>	<ul style="list-style-type: none"> On 10 October 2013, SEBI released the draft of SEBI (REIT), Regulations, 2013 On becoming effective, the said Regulations will make REIT as a recognized pooling /investment vehicle in India The above said Draft Guidelines, inter alia, require compulsory listing of the units of REIT 	<ul style="list-style-type: none"> Appropriate and clear fiscal provisions are required so as to have the REIT structure mobilize mass savings into the economy, which can help revive the slowed down real estate industry, especially the commercial real estate sector 	<ul style="list-style-type: none"> It is suggested that the first time transfer of assets by the sponsor/on behalf of sponsor to the REIT should be exempted from tax, so as to make it tax neutral. It is further suggested that if the units of the REIT cannot be listed due to under-subscription or any other reason; then the transfer of the assets of the REIT back to the sponsor/person on sponsor's behalf should also be exempted from tax. The provisions of section 50C/43CA, it is suggested, should not be made applicable to transfer of immoveable property to/by the REIT. As the REIT units are to be 	<ul style="list-style-type: none"> These provisions will provide the much required timely and efficient tax provisions so as to attract large organizations to sponsor and float REIT as well as the small investors into participating in real estate investments through REIT; thus providing the required boost to the sector.

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			<p>compulsorily listed, it is suggested that the beneficial provisions of exemption/ concessional taxation on capital gains arising from transfer thereon be applied thereto, in line with those applicable to listed shares and units of mutual funds.</p> <ul style="list-style-type: none"> • It is further suggested that the period of holding for considering long term asset should be reduced to 12 months in case of REIT units, again in line with those in respect of shares and units of mutual funds. • It is further suggested that the REIT be treated as a tax ‘pass-through’ vehicle (as in case of a Venture Capital Fund u/s.115U), whereby no tax is levied on the REIT itself nor is any tax imposed on distribution. However, tax is imposed on the investors of the REIT as if they were earning the income directly from portfolio companies/ assets. 	
Section 112(c)(iii)	<ul style="list-style-type: none"> • Provides for concessional rate of tax @10% on long term gains on unlisted ‘securities’ 	<ul style="list-style-type: none"> • Under the SCRA, the definition of ‘securities’ is interpreted to include only 	<ul style="list-style-type: none"> • It is recommended that suitable amendment be brought in section 112(c) (iii) so as to clarify that the same would apply to private 	<ul style="list-style-type: none"> • The objective of bringing the provisions of section 112 (c)(iii), as stated by the Finance Minister in his Budget Speech, and the CBDT in its

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	<p>to non-residents</p> <ul style="list-style-type: none"> The definition of 'securities' is linked to the Securities Contracts (Regulation) Act ('SCRA') 	<p>those that are 'marketable';</p> <ul style="list-style-type: none"> There have been a plethora of judgments on the subject, including the latest judgments of the Supreme Court in the cases of Sahara and Bhagwati Developers Pvt. Ltd.; which can create enormous litigation as to whether the shares of a private company can be covered under the definition of 'securities' under SCRA and consequently under section 112(c)(iii). 	<p>companies.</p>	<p>Circular 3 of 2012; is to bring parity in taxation of FIIs with other non-resident investors including Private Equity.</p> <ul style="list-style-type: none"> Accordingly, the suggested amendment will bring in the required clarity in fulfilling the objective of introducing the said provision and avoid enormous potential litigation.
Wealth-tax Act, 1957				
<p>Section 2(ea)</p> <p>Urban land liable to Wealth Tax (even though held as stock in trade by developers)</p>	<ul style="list-style-type: none"> Defines 'assets' which are liable to wealth tax, and includes urban land. 	<ul style="list-style-type: none"> Adversely impacts real estate developers as land is held by them as stock in trade. 	<ul style="list-style-type: none"> The real estate developers holding land as stock in trade should be exempted from wealth tax in respect thereof. 	<ul style="list-style-type: none"> Most of the assets are exempt from levy of wealth tax except for a few items like jewellery and bullion, motor cars, boats and yachts. Even these assets are exempted from wealth tax where they are held as stock in trade/for commercial purposes. In line with the same, therefore, similar provisions should be made to exempt urban land from wealth tax where it is held by real estate developers as stock in trade.

Part I – DIRECT TAX

B. Procedural Aspects

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>Section 47(xiii)(b) (e)</p> <p>Conversion of company into Limited Liability Partnership ('LLP')</p>	<ul style="list-style-type: none"> Threshold limit of Rs. 60 lakhs of total sales, turnover or gross receipts as one of the criteria to have a tax neutral conversion of a company to LLP. 	<ul style="list-style-type: none"> Companies waiting to convert into LLP which is an alternate corporate form of business, have to fulfill conditions under the provisions of Act, including turnover threshold. Use of LLP as a form of business is facing several regulatory hurdles also. Ambiguity exists regarding the meaning of the terms 'total 'sales', 'turnover', 'gross receipts' and 'in the business'. Real estate companies severely impacted as income from other sources like interest, dividend etc forms substantial part of the total income. There does not exist clarity on levy of 	<ul style="list-style-type: none"> Limit of Rs.60 lakhs should be scrapped. Alternatively, the limit of Rs.60 lakhs should be drastically increased. It should be clarified that for the purpose of determining the threshold, only gross receipts from business carried on by the company shall be considered. Instructions can be issued so as to not levy stamp duty on transfers resulting out of the conversion of company into LLP. 	<ul style="list-style-type: none"> Allowing level playing field to those who did not had the opportunity of choosing the option of LLP or company as vehicle, as LLP did not exist before 01.01.2009. For new businesses, which have to incorporate an entity as on date, there is a choice between LLP and company irrespective of the Sales, Turnover or Gross Receipts. The threshold of Rs.60 lacs enables conversion only by small retail businesses. By and large, small retail business is not carried on in the status of a company. The result therefore is that though a provision has been inserted, in practical terms the same is not widely utilized, which defeats the very purpose for which the same was enacted.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
		stamp duty on assets at the time of conversion of a Company to an LLP.		

Part II – INDIRECT TAX

B. Revenue Impacting Aspects

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Section 66E (a) – Renting of immovable	<ul style="list-style-type: none"> As per the current regime ‘Renting of immovable property’ is defined under 	Service tax on renting and Credit of Service tax on construction activity	<ul style="list-style-type: none"> If at all, the government continues to levy service tax on ‘renting’, we recommend that: 	<ul style="list-style-type: none"> The issue of service tax on renting is pending before ‘Supreme Court’. Before such amendment is given effect

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>property is a declared service</p> <p>Circular No. 96/7/2007-ST, dated 23 August 2007 (as amended)</p>	<p>declared service and liable to service tax</p> <ul style="list-style-type: none"> No credit of Service tax on construction activity is available against output Service tax liability on renting of immovable property service In terms of a Circular No. 96/7/2007-ST, dated 23 August 2007 (as amended by Circular No. 98/1/2008-ST, dated 4 January 2008), Credit of Service tax paid on construction activities is not available as the output in such case is an immovable property which is neither 'service' nor 'goods' and hence becomes a cost 	<p>against output service tax liability on renting of immovable property service</p>	<ul style="list-style-type: none"> Interest and penalty for the past period should be waived considering that the matter has been a subject matter of varied interpretation and litigation. Either credit of input taxes against payment of output service tax on renting should be allowed OR in case the credit is not allowed, service tax should be levied at a lower rate or on a lower value (by prescribing suitable abatements) to negate the cascading effect of taxes It is recommended that credit of input Service tax paid on construction service should be allowed against Service tax liability on renting of immovable property service or any other service 	<p>to, due regard should be given to the much awaited order of the Supreme Court.</p> <ul style="list-style-type: none"> Not allowing credit leads to cascading of taxes

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>New provision suggested (Section 65B(44) – Definition of service)</p>	<ul style="list-style-type: none"> Development rights denote various rights associated with the land. Taxability of development rights has not been clarified under the current regime Circular No. 151 /2 /2012-ST dated 10 February, 2012, issued in the context of erstwhile law, clarified that sale of land by the landowner is not a taxable service 	<p>Service tax on ‘Transfer of development rights’</p>	<p>It is recommended that a suitable clarification should be issued to provide that the transfer of development rights would not attract Service tax</p>	<ul style="list-style-type: none"> Under the current regime, the definition of service specifically excludes an activity which constitutes merely a transfer of title in immovable property Transfer of development rights would not be liable to Service tax as transfer of development rights would be considered as transfer of the title in an immovable property to the developer Further, transfer of development rights is a State subject and the land owner is required to pay Stamp duty on such transfers depending upon the State specific legislation. To illustrate, in the State of Karnataka, transfer of development rights attract Stamp Duty as the definition of immovable property includes development rights
<p>New exemption suggested (S.No. 13 of Exemption Notification no. 25/2012-ST dated 20.06.2012)</p>	<p>Service tax exemption is provided for construction of residential complex as part of JNNURM mission and Rajiv Awaas Yojana.</p>	<p>Service tax exemption to affordable housing projects Affordable housing projects particularly for the economic benefits of weaker section of society also get covered because of the expanded coverage of the definition.</p>	<p>It is recommended that similar exemption be provided to all affordable housing projects where the area is less than 80 square meter.</p>	<p>Given the socio economical need for affordable housing, the exemption would help the price sensitive segment</p>

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>New exemption suggested</p> <p>S.No. 14 of Exemption Notification No.25/2012-ST dated 20.06.2012</p>	<ul style="list-style-type: none"> • Service tax is levied on the basis of Negative List of Service regime with effect from 1 July, 2012 • Under the current regime, Service tax exemption on construction of residential buildings having single residential unit has been provided comparing to 12 residential units as provided under the erstwhile regime 	<p>Service tax on small residential projects</p>	<p>We recommend that status quo should be maintained and the earlier exemption of construction of upto 12 residential units should be continued to promote affordable housing. Further, it should be suitably clarified as to what would qualify as a single residential ‘unit’</p>	<ul style="list-style-type: none"> • Removal of exemption on residential buildings would have a significant detrimental impact not only on the sector but also on millions of people, who aspire for affordable Real Estate as this will result in escalation of Real Estate prices on account of levy of Service tax • Additionally, it is not clear as to what would qualify as a ‘residential unit’. For e.g. where a joint family gets a bungalow constructed with 3 independent floors with separate entrances, whether each of such independent floors would qualify as single unit or 3 separate units

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
New Provision suggested	<ul style="list-style-type: none"> • Service tax on PLC and ECS has not been clarified under Negative list regime • PLC and ECS of units in a residential complex or a commercial complex is a feature as all units cannot be similarly situated • As per the erstwhile law Service Tax was levied as a separate service on builders for providing preferential location of the complex on extra charges • Service tax was charged on full value without the benefit of abatement provided under notification 1/2006 as in case of other services like commercial construction and construction of residential complex service 	Service tax on 'Preferential Location' (PLC) and 'Equal Car Space' (ECS)	It is recommended that a suitable clarification should be issued to the effect that benefit of abatement would be applicable to all incidental charges such as PLC, ECS etc which are naturally bundled, irrespective whether or not such charges are shown separately on the invoice	<ul style="list-style-type: none"> • Any payment for PLC and ECS feature are in fact only a payment towards an inbuilt element of the value of the property. Stamp duty as such is also paid on the gross value of the sale amount of the transaction, simply covering the aforementioned services • Service in relation to providing PLC and ECS are inseparable from construction of residential complex service. As per the industry practice, these services are provided as a bundled service along with construction activity. Hence, the services should be considered as naturally bundled service and it should be considered as construction service

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>New Provision suggested [Notification CE 12/ 2012 dated 17 March 2012 (entry 206 and 186)]</p>	<ul style="list-style-type: none"> • Prefabricated structures are often casted for construction of civil structures (boundary walls, pipes) • As per notification CE 12/ 2012 dated 17 March 2012 (entry 206), excise duty is exempt only where goods specified under chapter 7305 or 7308 is fabricated at site of work • Further certain goods (ceramic products, stone work) are exempted under the above notification (entry 186), where manufactured at site that has been defined as premises specifically made available under the contract for such activities 	<p>Excise duty on prefabricated structures/ goods manufactured at site</p>	<p>Goods manufactured/ fabricated for civil work of a building by the contractor or sub-contractor should be exempt from excise duty</p>	<ul style="list-style-type: none"> • Such structures are not intended to be resold but purely used in the construction activities • Such structures are tailor made for the project • In certain cases, the goods are not manufactured at a location that can be considered as 'site' • Further, in other cases, the site is generally not defined under the contract as the intention is to engage the contractor for construction work and such activities are incidental to such scope of work • Consequently, the above conditions have led to a lot of hardship

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>Section 65B(41) – Definition of renting</p>	<ul style="list-style-type: none"> Under the stamp duty law, long term leasing of vacant land (say for 99 years) is treated at par with conveyance and the same attracts stamp duty Separately, the definition of ‘renting’ includes leasing, licensing or other similar arrangements. CESTAT Delhi, in the case of M/s Greater Noida Industrial Development Authority v. CCE, Noida [2012-TIOL-44-CESTAT-DEL] in the context of service tax laws as applicable for the period prior to 1 July 2012, while granting stay the Tribunal held that long term lease is akin to sale and would not be covered under ‘renting of immovable property’ 	<p>Service tax on long term lease of land</p>	<p>It is recommended that the definition of ‘renting’ provided under service tax law should be suitably amended to exclude long term lease of a period more than the threshold period, so that genuine long term lease transaction does not get covered under the taxable service head renting of ‘immovable property’, and the double taxation can be avoided</p>	<ul style="list-style-type: none"> Since the definition of renting does not provide any reference to the tenure for which the leasing is made, even long term lease of land may get included in the purview of service tax In such case, while on one hand, the long term lease of land would amount to conveyance of immovable property, on the other hand, it may also attract service tax

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>Section 65B(44) – Definition of service</p>	<p>Under the current regime, the definition of service specifically excludes an activity which constitutes merely a transfer of title in immovable property</p>	<p>Service tax on ‘incidental services along with transfer of property in plots’</p> <ul style="list-style-type: none"> All incidental services (e.g. preferential location of plots, laying of drainage or water connection, construction of roads, landscaping etc.) along with transfer of property in plots should be expressly excluded from the ambit of Service tax A Developer/ land owner while selling plots also provides incidental services such as laying of drainage or water connection, construction of road, landscaping etc. While the activity of mere transfer of property has been specifically excluded from the definition of ‘service’, such incidental services are also covered by such exclusion 	<p>It is recommended that services such as laying of drainage or water connection, preferential location charges etc. which are provided along with sale of immovable property should be excluded from the ambit of Service tax</p>	<ul style="list-style-type: none"> This is a case of composite contract i.e. which involves an element of transfer of title in immovable property and provision of service In the case of transfer of plot of land, the intention of the parties is merely to sell a plot of land and there is no intention to provide any service. The laying of drainage or water pipelines are ancillary activities and the parties do not intend on having separate rights Accordingly, the above transaction is a mere sale transaction and should not be artificially split for charging both Service tax and VAT

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>New Provision suggested</p> <p>(Erstwhile regime - Circular No. 334/1/2010-TRU dated 26 February 2010)</p>	<ul style="list-style-type: none"> Under the current regime, no exclusion/ exemption towards the External Development Charges (EDC) and Internal Development Charges (IDC) collected by Developer has been provided from the levy of Service tax Under the erstwhile regime, Departmental Circular No. 334/1/2010-TRU dated 26 February 2010 clarified that, “Development charges, to the extent they are paid to the State Government or local bodies, would be excluded from the taxable value...”. Thus, under the erstwhile regime, EDC and IDC to the extent they were paid to the State Government/ local bodies were specifically excluded and were not liable to Service tax 	<p>Service tax on EDC/ IDC</p>	<p>It is recommended that a suitable clarification/ notification should be issued to provide that EDC/ IDC are exempted from Service tax</p>	<ul style="list-style-type: none"> EDC and IDC are collected on actual on behalf of the Government and are not for providing of any service, no Service tax should be applicable on such charges The intention of the erstwhile law should continues to apply under the current regime as well and Service tax should not be applicable where the charges are collected on actual

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Section 66E (b)	<ul style="list-style-type: none"> It is common practice among customers to book flats during the beginning of construction and thereafter sell them when the construction is about to be completed or immediately before the completion certificate is issued by the Developer Under the erstwhile regime, receipt of consideration before issuance of completion certificate for construction of a complex intended for sale, by builder or any person authorized by the builder was liable to Service tax Under the current regime, the words ‘by builder or any person authorized by the builder’ have been omitted in the new Section. Accordingly, in absence of aforesaid words, there is ambiguity whether second/ subsequent sale by a customer would qualify as a declared service liable to Service tax 	Service tax on transfer of under-constructed flats by a customer	It is recommended that it should be clarified that resale of under-construction flats would not be liable to Service tax	<ul style="list-style-type: none"> In terms of Para 6.2.8 of the Guidance Note, it has been clarified that second sale of under-construction flat by a person to another should not fall under the declared service category as the said person is not providing any construction service On the other hand, Para 6.2.3 provides that where a flat is transferred by a land owner (prior to issuance of completion certificate) who has been allotted flats under a collaboration agreement, the same would be liable to Service tax Where Service tax is made applicable on re-sale of flats, the same would lead to practical compliance issues, as all re-sellers selling property of more than INR 10 Lakhs would be liable to obtain registration, pay Service tax and undertake all related compliances. This would lead to undue burden on such re-sellers Basis the above, while the Guidance Note has given contradictory positions, we believe that no Service tax should be leviable in either of the cases since under either of the above scenarios no service is provided by a buyer/ land owner

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Section 66D(k)	<ul style="list-style-type: none"> Under the negative list regime, it appears that only a 'distribution or transmission licensee' would qualify for exemption Further, in terms of Para. 4.11.2 of the Guidance Note, it has been clarified that Service tax would be applicable on charges collected by a Developer or a housing society for distribution of electricity unless it is entrusted with such function by the Central or a State Government or is a distribution licensee under the Electricity Act 	<p>Service tax on Electricity charges collected by Developers should continue to be outside the levy of Service tax</p>	<p>It is recommended that appropriate clarification should be issued to the effect that recovery of any electricity charges by Developers would continue to be outside the purview of Service tax</p>	<ul style="list-style-type: none"> Developer provides electricity to the flat owners/ society and collect charges in either of the following ways: <ul style="list-style-type: none"> In case of onward supply of electricity after procuring the same from the State Electricity Boards, consumption charges are recovered on actual from the flat owners on the basis of allotted sub-metres In case of Captively generated electricity (generated by using DG sets), the cost of the same is recovered from flat owners on actuals Electricity is supplied by the Developer merely for convenience of the residents and thus, the Developer acts as a via media between the State Electricity Board and the end consumer and does not provide any service. Accordingly, the same should continue to be outside the purview of Service tax Further, in terms of various Supreme Court and High Court judgments, electricity has been held to be 'goods'. Accordingly, supply of electricity would qualify as supply of goods which has been specifically excluded from the definition of 'service'

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Section 66B	<ul style="list-style-type: none"> Under the Negative List regime, all advances retained by service provider in the event of cancellation of contract of service by service receiver become taxable Further, as per Paragraph 3.1.1 of the Guidance Note, the phrase “agreed to be provided” has been interpreted that advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver become taxable as these represent consideration for a service that was agreed to be provided 	Service tax on advances forfeited for cancellation of agreement	It is recommended that no Service tax should be levied on advances forfeited for cancellation of agreement	<ul style="list-style-type: none"> Taxability of advances received for services ‘agreed to be provided’ is based on the basic premise that services will actually be provided. However, taxing of advances forfeited, where no service is actually provided, is against the basic principles of Service tax law Further, the definition of ‘service’ itself provides that service means ‘any activity carried out by a person’, thus, performance of an activity is an essential ingredient to qualify as a ‘service’. However, in case of forfeiture of advances, there is no actual activity being carried out. Accordingly, no Service tax should be levied on forfeiture of advances Additionally, assuming that the forfeited advances are liable to Service tax, it is not clear whether Service tax would be charged on the whole value or the abated value of the forfeited amount

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>S.No. 13 (a) of Exemption Notification no.25/2012-ST dated 20.06.2012</p>	<ul style="list-style-type: none"> Under the new regime, construction, repair, maintenance of roads for use by general public is exempted Further, Paragraph 7.9.3 of the Guidance Note also clarifies that construction of roads in a residential complex would be taxable 	<p>Service tax on construction, repair, maintenance of roads</p>	<p>It is recommended that blanket exemption on construction, repairs, maintenance etc. of roads (whether used by general public or not) should be provided</p>	<ul style="list-style-type: none"> Whether a particular road is for use by general public or not would have to be determined on a case to case basis, e.g. a road within a society is primarily for society members. Accordingly, one view could be that same is not for general public. Alternately, a view may be taken that in the absence of any restriction, it is for general public The levy of tax on the above activity would burden the common man who needs protection against price rise in basic infrastructure facilities. Additionally, the above levy runs counter to the basic objective of the Government to provide affordable housing

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>Notification 30/2012-ST dated 20 June 2012</p>	<p>Under the Negative List regime, liability to deposit 75%/ 50% tax has been shifted to the recipient of manpower supply service/ Works Contract Service where the service provider is an Individual, HUF, Partnership firm vide Notification 30/2012-ST dated 20 June 2012</p>	<p>Service tax under reverse charge mechanism</p>	<p>It is recommended that applicability of reverse charge mechanism i.e. payment of Service tax by the service recipient instead of the service provider should be done away with and the erstwhile position of applicability of reverse charge only on GTA services should be restored</p>	<ul style="list-style-type: none"> • Developers employ manpower supply contractors and works contractors on regular basis for different packages of work. Tracking all payments made to such contractors on real time basis, computing Service tax on the same and doing related compliances would become a cumbersome task. Thus, there are lots of practical difficulties in being tax compliant in case of such regular payments • Further, the Real Estate Industry is already burdened with several State/ Central and local levies. Shifting the onus of depositing tax on the recipient with respect to the above services, would further burden the industry with additional compliances thereby increasing the overall compliance cost.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>Rule 2A of Service Tax (Determination of value) Rules, 2006</p> <p>[Erstwhile regime - Rule 3 of Works Contract (Composition Scheme for Payment of Service tax) Rules, 2007]</p>	<ul style="list-style-type: none"> Under the erstwhile regime, a person executing a works contract (including maintenance, repair, etc.) had an option to discharge Service tax at a composition rate of 4.94% as per Rule 3 of the erstwhile Works Contract (Composition Scheme for Payment of Service tax) Rules, 2007 Under the current regime maintenance or repair of goods contracts, which involve activities such as glazing, plastering, tiling and installation of electrical fittings, are chargeable to Service tax at 60% of the total amount (i.e. 7.42%) 	<p>Service tax on maintenance, repair, etc. of immovable property</p>	<p>It is recommended that the composition rate of 4.94% under the earlier regime should be continued for ongoing works contracts for maintenance, repair and completion services for immovable properties</p>	<ul style="list-style-type: none"> Change in rate of tax in case of such ongoing contracts would lead to the following: <ul style="list-style-type: none"> Cash flow impact on the Developers There would be ambiguity whether a particular activity would qualify as 'original works' or not leading to litigation (as contracts for 'original works' would continue to be liable at 4.94%) Ambiguity regarding impact in case the Developer is undertaking two activities e.g. plastering along with original works The erstwhile benefit of composition rate of 4.94% should be continued for works contract for maintenance, repair and finishing services of immovable properties, as any increase in tax cost {i.e. 2.48% (7.42%-4.94%)} may add to the ultimate cost of flats in the hands of the buyer

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>New Provision suggested [S.No.9 of Exemption Notification no.25/2012-ST dated 20.06.2012]</p>	<ul style="list-style-type: none"> • Under the erstwhile regime, renting of following immovable property were not liable to service tax: <ul style="list-style-type: none"> - Vacant land whether or not having facilities clearly incidental to the use of such vacant land - Land used for educational, sports, circus, entertainment and parking purposes • However, under the new regime, only few activities such as renting of immovable property to an educational institution has been excluded from levy of Service tax 	<p>Service tax on renting of vacant land for parking, sports etc.</p>	<p>It should be clarified that the erstwhile exemptions from renting of immovable property for specified purposes would continue in the new regime as well</p>	<p>Activities of public importance like renting of immovable property to sports bodies, vacant land for parking purposes etc. were specifically exempted, in line with the objectives of the Government and keeping in view the interests of public at large</p>

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>New Provision suggested [S.No.29(h) of Exemption Notification no.25/2012-ST dated 20.06.2012]</p>	<ul style="list-style-type: none"> Under the new regime, Notification No. 25/2012-ST provides an exemption to sub-contractor providing services by way of works contract to another contractor providing works contract service which is exempt from Service tax e.g. construction of road However, there is no such exemption for 'pure labour services' provided to such a contractor 	<p>Service tax on pure labour services provided by sub-contractor to contractor</p>	<p>It is recommended that pure labour services provided by sub-contractor to contractor providing exempt works contract service should also be exempted from Service tax</p>	<p>Pure labour services are an integral part of the input cost for Developers, and no exemption for such services has been provided in the current regime, it would result in additional tax cost</p>

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>Rule 6 of the Cenvat Credit Rules, 2004 ('CCR')</p>	<p>In terms of Rule 6 of CCR, a provider of both taxable and exempt service is liable to reverse credit pertaining to exempt service</p>	<p>Full credit should be available to Developer even if certain flats are sold after issuance of completion certificate or commercial space</p> <ul style="list-style-type: none"> Some flats/apartments may remain unsold at the time completion certificate is issued to the Developer. Sale of such flats after receiving completion certificate would qualify as 'sale' Accordingly, the Developer would become both, provider of taxable service viz. construction of flats sold before issuance of completion certificate and seller of immovable property viz. construction of flats sold after issuance of completion certificate 	<p>It is recommended that 100% credit should be admissible to the Developer, irrespective of the quantum of flats sold after issuance of completion certificate</p>	<ul style="list-style-type: none"> As mere transfer of title in immovable property has been excluded from the definition of 'service', the same would not qualify as 'service' Restriction as provided under Rule 6 of the CCR is not applicable to the Developer and there is no need to reverse any proportionate credit for flats sold by Developer after receipt of completion certificate. This is so because, sale of flats (after receipt of completion certificate) constitutes sale of immovable property, which does not qualify as 'service'

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
<p>Notification 26/2012-ST dated 20.06.2012</p> <p>[Erstwhile regime - Notification No. 1/2006-ST dated 01.03.2006]</p>	<ul style="list-style-type: none"> Under the erstwhile regime, Notification No. 1/2006-ST dated 1 March 2006 provided the percentage of abatements for construction of commercial/ residential complex services. However, the abatement was available subject to no Cenvat credit being availed by the service provider Under the new regime, notification 26/2012 dated 20 June 2012 replaces the earlier notifications and an abatement of 75% on total value of contract is provided. Further, Cenvat credit has been allowed for 'input services' and 'capital goods' 	<p>Cenvat credit would be allowed for on-going contracts on which Service tax was being paid at abated rate under the erstwhile Notification No. 1/ 2006</p> <p>Whether Cenvat credit (for expenses incurred prior to 1 July 2012) would be allowed for on-going contracts on which Service tax was being paid under Notification no. 1/2006</p>	<p>Suitable clarification should be issued allowing Cenvat for on-going contracts, where Service tax was being paid at the abated rate under Notification No. 1/2006-ST</p>	<p>Any attempt to deny credit would lead to unwarranted complications in computing the eligible credit thereby increasing the litigation costs</p>
<p>Rate of Excise duty and Service Tax</p>	<ul style="list-style-type: none"> The rate of Excise duty has been increased to 12.36% w.e.f. 17 March 2012 Further, the rate of Service tax has been increased to 12.36% w.e.f. 1 April 2012 	<p>Excise Duty and service tax rates</p>	<p>It is recommended that Excise duty rates (specially on inputs used in construction) and Service tax rates should be decreased as the same results in increased construction costs, thus making housing and commercial space unaffordable</p>	<ul style="list-style-type: none"> With increase in the rate of Excise duty on construction material (such as cement, steel, etc.) and Service tax, the cost of construction has gone up leading to increase in cost of housing Accordingly, increased cost of construction adversely impacting the sector

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
New Provision suggested	Cement and Bricks are not included in the existing list of 'Declared goods'	Cement and Bricks should be included in the existing list of 'Declared goods'	In order to make affordable housing a reality, it is recommended that cement and bricks should be included in the list of 'Declared goods'	<ul style="list-style-type: none"> • Currently, steel being an essential input for construction is included in the list of 'Declared goods' prescribed under Section 14 of the Central Sales Tax Act, 1956. However, cement and brick is ignored, which is equally important as steel. Non inclusion of the same in the declared goods, make the housing exorbitant. • For e.g. current VAT rate of cement is generally 12.5% or more. In case cement is included in the list of 'Declared goods', VAT would be levied at the rate of 5%.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Section 8(3) of Central Sales Tax Act, 1956	Concessional benefit under the Central Sales Tax Act, 1956 is not available to Construction activities.	Form 'C' for Construction Activities	<p>Section 8(3) may be suitable amended to include construction activities for the purpose of issuance of Form C</p> <p>For e.g. in case value of cement to be purchased by developer is INR 100, the rate of tax on inter-State procurement of goods (to be collected in dispatching State) would be as under:</p> <ul style="list-style-type: none"> • Against Form C - INR 2 (@ 2%) – [if permissible] • Without Form C – INR 12.5 or more [depending upon the VAT rate as applicable on cement in the dispatching State which is generally 12.5% or more] 	Section 8(3) does not specifically prescribe construction activities as one of the specified activities for availing benefit of Form C, hence, construction become exorbitant.

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
New Provision suggested	Currently, exemption from payment of CST is available on inter-state supplies to SEZ subject to issuance of Form I by a SEZ unit or developer. However, certain components/ sub assemblies are not manufactured by the main contractor but bought from specialized agencies and directly taken to the site. However, there is no provision for issuance of Form I by the main contractor such that sub-contractors can also claim such CST exemption	SEZ exemption from payment of CST on supplies by sub-contractor to the main contractor	Provision for issuance of Form I by the main contractor so that sub-contractors can also claim such CST exemption, should be incorporated	Absence of provision for issuance of Form I by the main contractor so that sub-contractors can also claim CST exemption, results in additional tax costs

Part II – INDIRECT TAX

B. Procedural Aspects

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
New	<ul style="list-style-type: none"> • The Point of Taxation Rules 	Applicability of ‘Point of	The PoT rules must be duly amended	<ul style="list-style-type: none"> • It is common thing in construction of real

Section	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
Provision suggested [Rule 3 of 'Point of Taxation Rules, 2011']	<p>(PoT Rules) for Service tax introduced w.e.f 1 April 2011 <i>vide</i> notification 18/2011-ST as amended by notification 25/2011-ST has brought significant change in the point of taxation of service tax shifting the liability to pay service tax from collection basis to the point earliest of 'date of issue of invoice' or 'date of receipt of payment, including advance'.</p> <ul style="list-style-type: none"> The date of completion of services for construction services has been defined to be the date of completion of that event which requires periodic payment (i.e. date of milestone payment) as per the contract between the service provider and service recipient. 	Taxation Rules, 2011' in Real Estate	<p>so as to provide specific dispensation for real estate industry. The real estate developers should be allowed to continue making payment of service tax on 'receipt basis' instead of 'accrual basis' as prevailing earlier.</p> <p>Further, in case of allotment of built-up space in lieu of development rights in land, it should clarified that point of taxation should arise only upon completion of construction</p>	<p>estate projects that work gets delayed for a temporary period due to social, environmental and legal reasons and the work does not get completed on the specified date. In such event, saddling the project with service tax liability on such date specified in the contract, even though the construction for such milestone is not complete would only lead to additional cost in terms of working capital requirements.</p> <ul style="list-style-type: none"> The payment of service tax on the basis of payment milestones would entail the impractical task of tracking each and every milestone date in each and every flat sale contracts entered by the developer with millions of flat buyers located in India, to pay service tax for the services that are not even provided There is ambiguity on point of taxation case of grant of built up space to landowner