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**Impact of Union Budget 2016 on the Real estate Sector**

05 March 2016

**Background**

The Union Budget for 2016-17 was presented by the Finance Minister in Parliament on 29 February 2016. This alert summarizes key tax proposals in the Finance Bill, 2016 ('Bill') impacting the Real Estate sector. The Bill will be discussed in the Parliament before it is enacted and is subject to any amendments that may be made pursuant to these discussions. Further, in his Budget speech, the Finance Minister has made certain policy announcements which will be implemented through legislative / administrative action in the coming months.

**Direct Tax Proposals****Phasing out of deductions**

Based on the roadmap proposed for phasing out of exemptions and deductions and taking into account the response of stakeholders in this regard, certain incentives available are proposed to be phased out.

No deduction is proposed to be provided under section 80IAB of the Act where development of SEZ commences on or after 1 April 2017.

**Incentives for Promoting "Housing for All"**

With a view to incentivize an affordable housing sector as a part of larger objective of 'Housing for All', it is proposed to insert new section 80-IBA providing for 100% deduction of the profits from developing and building affordable housing projects. Such projects are required to be approved by the competent authority after 1 June 2016 but on or before the 31 March, 2019 subject to certain conditions.

It is also proposed to provide an additional deduction of up to Rs. 50,000 in respect of interest on loan taken for acquisition of residential house property from any financial institution u/s 80EE. This incentive is proposed to be extended to a house property of a value less than Rs.50 lacs in respect of which a loan of an amount not exceeding Rs.35 lacs has been sanctioned during the period from 1 April,

2016 to the 31 March, 2017. This amendment is proposed to take effect from 1 April, 2017.

### **Exemption from Dividend Distribution Tax on distribution made by a SPV to Business Trust**

In the case of Business Trusts [viz. Real Estate Investment Trusts (REITS) and Infrastructure Investments Trust (Invits)]; the Finance Act, 2015 rationalized the taxation regime to provide a tax pass through status to REITS and Invits. However, in the case of REITS; where income generating assets are held through an SPV; dividend distributions by such SPVs to the Business Trust were subject to DDT.

The DDT on dividend distributions by SPVs to the Business Trust rendered the REIT/ Invits structure tax inefficient and accordingly, the same did not take off.

To address this concern, the Bill proposes to exempt from the levy of DDT, dividends declared, distributed and paid by SPVs to its shareholder, being a Business Trust subject to such SPV being wholly owned by the Business Trust (except where shares are mandatorily required to be held by any other person in accordance with any other regulation).

The exemption from levy of DDT is applicable only in respect of distribution of current income and income earned by such SPV after its acquisition by the Business Trust.

This provision is proposed to be effective from 1 June 2016.

### **Long-term capital gains on 'unlisted securities'**

Existing provisions provide for a tax rate of 10% on long-term capital gain to non-residents on transfer of 'unlisted securities'. Presently, there is an ambiguity whether the term 'unlisted securities' will include shares of a private limited company.

It is proposed to extend the concessional tax rate of 10% to long-term capital gains arising to non-residents from transfer of shares of a company not being a company in which public is substantially interested.

## **Indirect Tax Proposals**

### **Service Tax**

The standard rate of Service Tax (14%) and Swachh Bharat Cess (0.5%) have been retained.

### **New levy on services – Krishi Kalyan Cess**

It is proposed to levy Krishi Kalyan Cess at the rate of 0.5% on the value of taxable services thereby increasing the effective rate of service tax rate to 15%. It is also proposed that credit of the cess paid would be allowed to be utilized against output cess. This levy would be effective from 01 June 2016.

### **Annual Service Tax return to be filed**

It is proposed to introduce an annual Service Tax return which is to be filed by the Service tax assesses rendering services above a certain threshold as may be notified. This amendment would come into effect from 01 April 2016.

### **Restoration of certain withdrawn exemptions**

The exemption from service tax on construction and related services provided to the government with respect to civil structure, structure meant to be used other than for business or commerce, for use as educational, clinical or art/cultural establishment, residential complex meant for self-use of government employees has been restored.

The exemption from service tax on construction services relating to a port or airport has been restored.

The above mentioned restoration of exemptions would be applicable from 01 April 2015 on the contracts which were entered prior to 01 March 2015. Further the exemption has a sunset clause of 31 March 2020.

### **Exemption on services to mono rail or metro withdrawn**

The exemption to construction, erection, commissioning and installation of original works pertaining to monorail or metro has been withdrawn with effect from 01 March 2016.

### **New Exemptions introduced**

The following services has been exempted from service tax with effect from 01 March 2016:

- Construction of civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All

(Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.

- Construction of civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana".
- Construction of original works pertaining to low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana and any housing scheme of a State Government.

#### **Uniform abatement percentage notified**

A uniform abatement of 70% in respect of construction of a complex, building, civil structure has been notified. This is done to remove the existing dual abatement rates of 75% and 70% which is applied to residential complex with specified features and other constructions respectively. This would come to effect from 01 April 2016.

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