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Union Budget 2022

Tax Alert – Real Estate sector

Focus on policy

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The real estate sector had numerous expectations from the Union Budget 2022 from a tax perspective to enable it to sustain the green shoots of recovery which it has recently witnessed after suffering tremendously during the early stages of the pandemic. However, the Budget has not met the expectations from a tax perspective with incremental changes relating to rationalization of tax withholding provisions on immovable property purchase and rental, introduction of dividend, and bonus stripping provisions to units of REITs, InvITs and AIFs being announced.

On the policy front, there have been welcome announcements relating to allocation of funds to the PM Awas Yojana, extension of the credit guarantee scheme with a specific allocation to the hospitality sector, announcement of new legislation to replace existing SEZ Act and the Government intention to work with States to improve on digitization of land records and also reduction of time for obtaining construction approvals for middle class and EWS housing and also improve access to capital for the same. The policy announcements should help in growth of the sector.

How does the budget impact the real estate sector?

Key takeaways for a tax professional

- Provisions related to dividend and bonus stripping extended to units of REITs, InvITs and AIFs.
- Withholding tax on transfer of immovable property made applicable to higher of consideration paid or SDV.
- Relaxation from applicability of higher withholding tax rate applicable for non-filer of income- tax return on withholding tax provisions applicable for rental payments made by certain individuals and HUFs and on any payment made for transfer of immovable property to resident transferor.
- Surcharge on all long-term capital gains to be capped at 15%.
- Amendments in custom duty rates for specified inputs used in real estate sector.

Highlights

- State to partner in Development of Enterprise and Service Hubs
- Digitalization of land records
- Rationalization of provisions
- BCD exemption on select goods

Key amendments

- **Dividend stripping and bonus stripping provisions made applicable to units of REITs, InvITs and AIFs as well**
  - In case where:
    - a person acquires any securities or units of specified mutual fund or Unit Trust of India within a period of 3 months prior to record date[1]; and
    - transfers such securities within a period of 3 months after such date or units within a period of 9 months after such date; and
    - dividend or income on such securities or units is exempt.

    then any loss arising in the hands of such person on purchase and sale of such securities or units shall be ignored for the purposes of computing income chargeable to tax to the extent that such loss does not exceed the amount of dividend or income received or receivable (generally referred to as 'dividend stripping provisions').
  - Similarly, in case a where:
    - person acquires units of mutual funds or Unit Trust of India within a period of 3 months prior to the record date (as mentioned above); and
    - is allotted additional units without any payment based on holding of the acquired units; and
    - transfers the units originally acquired within a period of 9 months from the record date (while continuing to hold the additional units).

    then any loss incurred by the person on purchase and sale of the original units shall be ignored for the purpose of computing income chargeable to tax and the amount of such loss shall be deemed to be the cost of acquisition of the additional units (generally referred to as 'bonus stripping provisions').
  - Currently, the dividend and bonus stripping provisions are not applicable to units of REITs, InvITs or AIFs.
  - With a view to widen the tax base and to prevent/ limit tax evasion in this regard, the existing provisions have now been amended to apply the provisions of dividend and bonus stripping on units of REITs, InvITs and AIFs as well.
  - This amendment will take effect from 1 April 2023.

[1] Record date means date on which company or mutual fund entitles the holder of such security or unit to receive dividend, income, or bonus units, as the case may be.

- **Clarifications on withholding tax provisions on transfer of immovable property**
  - A person responsible for paying to a resident any sum by way of consideration for transfer of immovable property (other than agriculture land) is required to withhold tax at the rate of 1% of such consideration.
  - The above provisions are not applicable where the consideration for transfer of immovable property is less than INR 50 lakh.
  - The Budget 2022 has amended the above provisions to trigger withholding tax on transfer of immovable property at the rate of 1% on consideration or SDV, whichever is higher.
  - Further, the threshold of INR50 lakh is now to be considered with respect to SDV as well. Hence, the above withholding tax provisions shall not be applicable where the consideration paid for transfer of immovable property and SDV are both less than INR50 lakh.
  - This amendment will take effect from 1 April 2022.
- **Relaxation of applicability of higher withholding tax rate for non-filer of income- tax return on withholding tax provisions related to rental payments made by certain individuals and HUFs and payment made for transfer of immovable property to resident transferor.**
  - A person responsible for WHT on payment made to a person who has not filed the return of income for 2 previous years and the aggregate of tax deducted at source and tax collected at source in such a case exceeds INR50,000 or more in each of these two previous years is required to withhold tax at higher of:
    - twice the rate specified under the Act; or
    - twice the rate in force; or
    - at the rate of 5%.
  - To reduce compliance burden, Budget 2022 has provided relaxation from applicability of the above provisions on taxes required to be withheld on following type of payments:
    - Rental payments made by certain individuals and HUFs to a resident exceeding INR 50,000 for a month or part of month;
    - Payment made for transfer of immovable property to resident transferor.
  - This amendment will take effect from 1 April 2022.
- **Surcharge on all long-term capital gains to be capped at 15%.**
  - Currently, long term capital gains are subject to a graded surcharge (maximum of 37%). To rationalize the provisions, surcharge on long term capital gains on all classes of capital assets is now to be capped at 15%.
- **Key amendment in custom duty rates**
  - Relevant changes in BCD rates are introduced as below:

Tariff Head	Description	BCD Rate		Effective Date
		Existing	Proposed	
2505 10 11	Silica sands (Processed White)	2.5%	10%	02-Feb-22
2505 10 12	Silica sands (Processed Brown)	2.5%	10%	
2505 10 19	Other silica sands	2.5%	10%	
2515 11 00	All goods **other than** Rough Marble and Travertine Blocks and Marble Slabs	10%	40%	02-Feb-22
2515 12 10		10%	40%	
2515 12 20		10%	40%	
2515 12 90		10%	40%	
2516 11 00		10%	40%	
2516 12 00		10%	40%	

  - SWS exemption has been granted for stones (blocks/ slabs) covered by HSN 2515 12 90, 2516 11 00 and 2516 12 00.
  - With effect from 01 May 2022, the following entries will be omitted from Exemption Notification No. 50/2017 dated 30 June 2017 and the same would operate through the Customs Tariff Act, 1975. Further, to maintain the existing concessional rate of BCD, the corresponding rate under the First Schedule is modified accordingly.

Tariff Head	Description	Existing Rate in Tariff	Revised Rate in Tariff
6901	Bricks, Blocks, Tiles and Other Ceramic Goods of Siliceous Fossil Meals (For Example, Kieselguhr, Tripolite Or Diatomite) Or of Similar Siliceous Earths	10%	7.50%
6902	Refractory Bricks, Blocks, Tiles and Similar Refractory Ceramic Constructional Goods, Other Than Those of Siliceous Fossil Meals or Similar Siliceous Earths		
6903	Other Refractory Ceramic Goods (For Example, Retorts, Crucibles, Muffles, Nozzles, Plugs, Supports, Cupels, Tubes, Pipes, Sheaths, Rods and Sliding Gates), Other Than Those of Siliceous Fossil Meals or Of Similar Siliceous Earths	10%	7.50%

- The Special Economic Zones Act will be replaced with a new legislation to enable the States to become partners in '*Development of Enterprise and Service Hubs*'. Further, reforms will also be introduced in Customs Administration of SEZs to create an IT driven environment wherein the entire function will be administered on the Customs National Portal with a focus on higher facilitation and with only risk-based checks. This reform will be implemented by 30 September 2022.

Impact analysis

There were numerous pre-budget expectations from a tax perspective which have not been fulfilled by the Union Budget 2022. However, the policy initiatives announced in the Budget could help growth in the sector.

Glossary

REITs- Real Estate Investment Trusts

InvITs- Infrastructure Investment Trusts

AIFs- Alternative Investment Funds

EWS- Economically Weaker Sections

SDV- Stamp Duty Value

WHT- Withholding Tax

HUF- Hindu Undivided Family

BCD- Basic Custom Duty

SWS- Social Welfare Surcharge

HSN – Harmonised System of Nomenclatures

SEZs- Special Economic Zones

For details on other sectors and solutions visit our website https://www.ey.com/en_in/tax/union-budget-2022

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