

NEWSLETTER

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DAMANIA & VARAIYA

Chartered Accountants



CONTENTS	PAGE
▪ INCOME TAX	2
▪ Real Estate Regulation Act	7



INCOME TAX

Amendment to the Finance Bill 2017

The Government tabled the Finance Bill 2017 with certain amendments in the Lok Sabha for approval which was passed. The President also gave his assent on 31st March 2017. The amendments to the Finance Bill 2017 are as follows:

Restriction on applicability of Section 56 (2)(x):

- The Bill had proposed to insert Section 56(2)(x) to tax sum of money or property received without consideration or for inadequate consideration was made applicable to all categories of persons.
 - ✓ It is now proposed to exempt from the aforesaid provision in respect of any sum or property from an individual to the trust created or established solely for the benefit of a relative of the individual.

INCOME TAX (cont.)

- ✓ This is a welcome change since it removes the anxiety of a lot of people on increased tax liability on succession planning through family trusts.

Mandatory requirement of quoting Aadhaar Number in the PAN application AND return of income:

- ✓ It is proposed to insert a new section 139AA which states that any person who is eligible to obtain Aadhaar Number on or after 1st July 2017 shall quote the Aadhaar Number in the application of PAN as well as Return of Income
- ✓ It further states that every person who has been allotted PAN as on 1st July 2017 and who is eligible to obtain Aadhaar Number shall intimate the same to the prescribed authority in a prescribed form and manner on or before the date to be notified in official Gazette.

Restriction on Cash transactions:

- The Bill had proposed to insert Section 269ST to restrict transactions in cash. It was proposed that no person shall receive an amount of Rs. 3 Lakhs or more:
 - a) From one person in a single day or
 - b) From a single transaction or
 - c) In respect of transactions relating to one event or occasion from a person.
- ✓ It is now proposed to reduce the threshold limit of cash transactions from Rs. 3 Lakhs to Rs. 2 Lakhs.
- ✓ For contravention of this section, the penalty will be equal to the amount of such receipt.
- ✓ This is in line with the continuous efforts of the Government to discourage cash transactions and encourage transactions through digital mode.

INCOME TAX *(cont.)*

TCS on cash transactions omitted:

- The Bill had proposed to delete Tax Collection at Source (TCS) on purchase of jewellery in cash for an amount exceeding Rs. 5 Lakhs. However TCS on purchase of bullion and other goods in cash for an amount exceeding Rs. 2 Lakhs was proposed to be continued.
- ✓ It is now proposed to delete even the applicability of TCS on purchase of bullion and other goods through cash payments.

Compiled by: Malay Damania, Partner

INCOME TAX (cont.)

Re: EIH Limited – Delhi Tribunal

Sub: Whether there is any liability to deduct TDS u/s. 192 on the Company on “Tips” recovered from guests and paid to employees.

Facts: The assessee Company was engaged in the business of chain of hotels (Oberoi group). The Company had recovered extra amount of “Tips” over the bill value paid by the guests at the time of settlement of their bills in appreciation of good services provided by their staff. On the disbursement of this amount to the staff, the Company did not deduct any tax u/s. 192.

The AO was of the view that since tips are paid to the employees in lieu of rendering prompt services for their employer, these accrued to employees for services rendered for their employer and therefore the company ought to have deducted TDS u/s. 192. The CIT(A) confirmed the order of the AO.

The Company preferred an appeal before the Tribunal who held that:

For the purpose of Section 15 to apply, there should be a vested right in an employee to claim any Salary from an employer or former employer. It was held that since the tips were received from the customers and not from the employer, these would be chargeable in the hands of the employee as Income from Other Sources and Section 192 would not get attracted. The assessee Company cannot be said to be in default of the provisions of Section 192 as there was no liability to deduct TDS on tips recovered from hotel guests.

Re: Bharat Serum & Vaccines Ltd. – Mumbai Tribunal

Sub: Assignment of Patent taxable as Capital Gains u/s. 55 (2) and its cost of acquisition has to be taken as NIL

Facts: The assessee Company was engaged in the business of Research & Development, manufacturing and trading of bio-pharmaceutical, bio-technological products and process related technology. During the year the Company transferred a patent for Rs. 1.50 crores. The entire receipt on assignment of patent was regarded as capital receipt and claimed exempt from tax.

The AO was of the view that it was not possible to develop a patent without contribution from skilled personnel in a state of the art research facility, the process of developing a patent was a part of the business of the assessee and that it had claimed all the expenses

INCOME TAX *(cont.)*

of skilled personnel and research facility in the P & L account. The claim made by the assessee that it had not incurred any cost for developing patent was rejected by the AO and the receipt was held as revenue receipt and taxed accordingly.

The Mumbai Tribunal held that:

Before getting a patent of medicine, the assessee has to carry out a lot of research analysis and experimentation. Naturally, it would be required to incur expenditure for both the activities. The patent was registered for commercial exploitation in India and international market. It was transferred to the assignee for exploiting it commercially. Section 55(2) talks of right to manufacture, produce or process any article or thing. Therefore, as per the provisions, the right to manufacture/produce/process would be taxable under the head Capital Gains and its cost would have to be taken as NIL.

Compiled by: Malay Damania, Partner



Real Estate Regulation Act

The Real Estate Regulation and Development Act, 2016

Introduction:

- RERDA-2016 is an Act of the Parliament of India & will be applicable to whole of India except Jammu and Kashmir
- The bill was passed by the Rajya Sabha on 10th March, 2016, by the Lok Sabha on 15-03-2016 & Notified on 26-03-2016.
- The act came into force from 1 May 2016 with 69 of 92 sections notified.
- The Central and state Govt to notify the Rules in six months and Establish the Real Estate Authority & Appellate Tribunal in 1 yr.
- Real estate regulatory authority (RERA) is the Regulator
- The law is not Retrospective but applicable to all ongoing projects and new projects- Commercial, residential, plotting etc.;

Real Estate Regulation Act (cont.)

WHY THIS ACT IS REQUIRED?

As we all know that in Real Estate business, there are lot of small & mid size developers, lack of transparency, and involvement of cash transaction. Developers take money in advance from the buyer in the beginning of the project and if for some reason project gets stuck or delayed there is no remedy for the buyer to get their money back or possession of property they bought. They have to go to court for justice or they have to wait for long either to receive back their money or possession of property. There is no regulator in India who will address & dispose of their complaints and grievances; there is no defence mechanism for buyer.

Similarly Developers get stuck due to various regulation and compliances of various authorities & Government department, the permission required from them involves cash transaction and if for some or other reason matter goes for litigation and whole project gets delayed and both buyer & Developer lose their time & money.

Following are areas of concern for Real estate as follows:

- Highly unregulated sectors in spite of many laws.
- Lack of transparency in projects
- No proper information about the builder
- Lack of Easy and Quick Redressal
- Possession not given in time.
- Do not provide OC and Completion Certificate
- Demand Additional amount in cash
- Do not Form the Societies or give conveyance.
- Do not provide with all the agreed amenities.
- NO accounts are provided for maintenance
- Parking and open spaces are sold
- Fraud, cheating by unscrupulous builders
- Approved Plans, title deed not proved.
- Flat areas are sold at Super Built up etc.

Real Estate Regulation Act (cont.)

To get rid of the above problem areas and to curb Black Money circulation and corruption, Government of India came out with Real Estate Regulation & Development Act, 2016 enacted as under.

- Applicable All Over India Except J & K
- Related to Owning / acquiring Rights
- Concerned with Flats, Building, Development, Plots Commercial, Residential
- Implemented through all the connected Central & State Law applicable
- Freehold Rights
- Leasehold Rights
- APARTMENTS - INDEPENDENT UNIT/PLOT Provided or agreed to be provided by the Promoter to the Purchaser for a Consideration
 - Residential Flat
 - Shop
 - Garage
 - Bungalow
 - Industrial Gala
 - Office
 - Developed Plot
 - Any Constructed or to be Constructed Structure
 - Office

FOLLOWING ARE THE PARTIES ON WHOM OBLIGATIONS ARE MADE APPLICABLE under RERA

1. Promoter-Land Owner, Builder / Developer
2. RE Agents, Professionals Contractors and other Agencies Connected with RE Projects
3. Allottees (Flat Buyer/s) - Single, Group

e.g.: Individual, Firm, Company, Assn of Persons, Govt., Semi Govt. Local Authority, Trust Society – u/SRA, Co-operative Society u/ MCS of MSC, LLP or any other person or group of persons.

Real Estate Regulation Act (cont.)

Objective and Purpose of the RERDA-2016

- Restore confidence in the Real Estate Sector & Protect Stakeholders
- Promote regulated and orderly growth through efficiency, professionalism and standardization, Fair practice, accountability,
- Bring transparency, fairness, reduce frauds and delays significantly
- To establish mechanism to enforce disclosure
- To provide adjudication machinery for disputes
- To establish a Real Estate Regulatory Authority
- To Establish an Real Estate Appellate Tribunal
- To ensure consumer protection, without adding another stage in the procedure for sanctions.

The salient features of the RERDA-2016

➤ To Establish a Regulator:

By Appropriate Government:

- For each State by respective State Government.
- For Union Territories by Central Government.

➤ Accreditation:

By Mandatory registration of:

- Real Estate Projects by Promoters &
- Real Estate Agents

➤ Mandatory public disclosure norms:

- Details of developer,
- Details of the project,
- land status ,
- Statutory approvals and
- contractual obligations;

Real Estate Regulation Act (cont.)

➤ Obligations of promoters:

- Register the project with the authority before sale.
- Adhere to approved plans & project specifications,
- Publish complete details of projects on website.
- Deposit 70% of funds in a separate bank account, to be used for that real estate project only after certifying by CA, Civil Engineer and Architect to refund moneys in cases of default;
- Update website with quarterly information on sale and progress
- Get the accounts Audited by CA within 6 months.
- Register the Agreement on receipt of 10% of amount
- Submit all the inform about project from time to time to RERA.

➤ Obligation of allottee :

- to make necessary payments and
- payment of interest in case of any delay;

➤ The Authority to act as the nodal agency :

- To co-ordinate efforts in development of the sector
- To render advice to the appropriate Government to ensure the growth and promotion of a transparent, efficient and competitive real estate sector;
- To establish dispute resolution mechanisms for settling disputes between promoters and allottees/ buyers;

➤ Powers to make Act, Rules, Regulations, Direction etc:

- Central Act uniform across India except J & K;
- States to have powers to make rules
- Regulatory Authority to make regulations;
- Central Government to issue directions to States.

Real Estate Regulation Act (cont.)

➤ Dispute resolution mechanisms:

- Adjudicating officer to assess damages
- Regulatory Authority to settle any Disputes
- Real Estate Appellate Tribunal to hear appeals
- Jurisdiction of Civil Courts barred
- Consumer Courts to continue.

➤ Penal provisions:

- To ensure compliance of Provisions of Act
- To comply with orders of the Adjudicating officer, Authority and Tribunal.

OFFENCES, PENALTIES AND ADJUDICATION: The act provide stringent penalties for offences for contravention of rules and adjudication thereof.

1. Punishment for non-registration
2. Penalty for contravention
3. Penalty for failure to comply with orders of Authority by promoter.
4. Penalty for failure to comply with orders of Appellate Tribunal by promoter
5. Penalty for failure to comply with orders of Authority by real estate agent.
6. Penalty for failure to comply with orders of Appellate Tribunal by real estate agent.
7. Penalty for failure to comply with orders of Authority by allottee.
8. Penalty for failure to comply with orders of Appellate Tribunal by allottee.
9. Offences by companies.
10. Compounding of offences.
11. Power to adjudicate.
12. Factors to be taken into account by the adjudicating officer.

Real Estate Regulation Act (cont.)

DEPARTMENT TO BE VISITED: Various Departments are notified as below for various permission, documentation and fast approvals and registration.

- City Survey Office – for Property Card
- Collector of Stamps – For Stamp Duty
- Sub Registrar – For Registration of Copy
- Assessment Dept– For Change in the Prop. Tax Bill
- Collector office : For N.A. Order
- Revenue Dept : ULC order
- Many more department on case to case basis

The act will now have greater impact in Real estate and infrastructure sector, It is the second largest employment generation sector in India and will bring faith transparency and investment in this sector in big way.

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