# Press Release

## Builders Association of India Seeks Comprehensive Tax Reforms to Boost Construction and Infrastructure Sectors

***Submits Pre-Budget Memorandum on Direct and Indirect Taxes to the Ministry of Finance***

National, November 2026: The Builders Association of India (BAI) has submitted its comprehensive Pre-Budget Memoranda on Direct and Indirect Taxes to the Ministry of Finance, Government of India, seeking tax reforms to address long standing issues faced by the construction, infrastructure and real estate sectors ahead of Union Budget 2027–28. The recommendations seek rationalisation of taxation, reduction in compliance burdens and tax litigation, timely release of contractual payments, resolution of working capital challenges and appropriate policy measures to improve the financial health of contractors, builders, developers and infrastructure companies.

Highlighting the sector's critical contribution to economic growth, employment generation, capital formation and nation-building, BAI emphasised the need for a rational, predictable and industry-friendly taxation framework to encourage investments, improve liquidity, facilitate ease of doing business and accelerate infrastructure and housing development.

During the meeting, BAI President Shri Ravindra Tyagi urged the Government to consider the Association's recommendations and introduce appropriate policy measures to address the taxation-related challenges faced by the industry. He emphasised that a supportive tax regime would strengthen liquidity, ease financial and operational pressures, encourage investment and ensure timely execution of infrastructure and housing projects.

As part of its recommendations on indirect taxation, BAI sought permanent measures to address the GST-related challenges faced by the construction industry, particularly contractors executing government and government-related works. The Association proposed an additional GST payment structure, including an optional 5% composition scheme without Input Tax Credit (ITC), for government and related works. It also recommended a special mechanism allowing contractors to discharge their GST liability on a receipt basis, considering delays in contractual payments, particularly in government projects, or the introduction of an alternative mechanism to ease the financial burden on contractors and prevent working capital from getting blocked due to tax obligations preceding actual receipt of payments.

BAI further sought a mechanism for refund of accumulated excess Input Tax Credit arising under the inverted duty structure, including consideration of ITC on input services, to ensure that legitimate credits are not blocked and businesses are able to maintain adequate liquidity. The Association also advocated bringing petrol, diesel and other petroleum products within the GST framework to rationalise taxation, facilitate the availability of Input Tax Credit and reduce the cascading impact of taxes on the construction, infrastructure and allied sectors.

Please replace the name as Ms. Vatsala Jha, IRS, Member, CBDT in place of Shri Sanjay Kumar Agarwal, IRS, Chairman, Central Board of Indirect Taxes and Customs (CBIC),

The Pre-Budget consultation meeting was chaired by Ms. Vatsala Jha, IRS, Member,

Central Board of Indirect Taxes and Customs (CBIC), and attended by senior officials of the Ministry of Finance. The BAI delegation comprised Shri Ravindra Tyagi, President, BAI; CA Tarun Ghia, Chairman, Taxation – Direct Tax Committee; CA M. Raveendaran, Chairman, Taxation – Indirect Tax Committee; Shri Raju John, Executive Secretary; and CA Sanjay Chaudhary, Head – Government Communication and Coordinator, Delhi Office.

Representing over 25,000 business entities through more than 280 Centres across India, with an indirect membership of over 1,50,000, BAI expressed confidence that favourable consideration of its proposals in Union Budget 2027–28 would strengthen the construction ecosystem, ease financial constraints faced by industry stakeholders and contribute significantly to India's infrastructure-led economic growth.

BAI reiterated its commitment to working closely with the Government to promote a progressive, transparent and business-friendly taxation environment in support of India's vision of a developed nation.

About Builders Association of India:

**Established in 1941, Builders Association of India (BAI) is the apex national organisation representing the construction industry. It actively engages with government authorities and policymakers to address industry challenges, promote favourable policies, strengthen infrastructure development and facilitate the sustainable growth of India's construction sector.**

# PRE-BUDGET MEMORANDUM

# 2027-28

# DIRECT TAXES

# BUILDERS' SSOCIATION OF INDIA

# MUMBAI

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# BUILDERS' ASSOCIATION OF INDIA

## PRE BUDGET MEMORANDUM TO UNION BUDGET 2027-28

As the common tax issues concerning the business fraternity are being represented by various chambers of commerce and business and the common issues concerning the tax payers are represented by the tax practitioners' associations, therefore, the representation by BAI is being made pre dominantly in respect of the issues specific to the real estate development, construction and infrastructure industries and including issues pertaining to builders, developers and contractors and stakeholders.

Indian Economy has been withstanding quite robust even in the face of west asia crisis and high crude prices. The power of resilience in the economy can be further enhanced by supporting and encouraging the real estate and infra industries.

Infrastructure development and satisfying housing needs of the people of the country is a pre requisite for any economy to get transformed into a developed economy. Therefore support and encouragement to infrastructure and construction industry are rightly considered priority areas by the Government of India. Builders' Association of India, therefore through this pre budget memorandum makes a fervent appeal to the government to support and encourage the infrastructure and real estate industries in all possible ways. It needs no elaboration that in India, the infra, real estate industry and the economy as a whole go hand in hand as the former has the best capacity to boost employment, government revenue and the economy.

Government is fully aware that the infrastructure projects and construction industry can provide required fillip to the fast and sustainable development of the economy which is its prime economic objective. At the same time both the industries have their own problems

and issues. Tax incentives by the Government means that the government forgoes or reduces tax for the time being. The absence of such incentives may adversely affect very income generation. The multiplier effect of growth of the industry is quite high as they deploy huge capital and provide huge employment. While the infrastructure industry will create basis for development potential of the economy, the housing industry will satisfy the basic need of the people and will enhance their confidence to contribute to the economy.

At the outset it is therefore suggested that the government should conceive the schemes to give 100% income tax incentive to the all the house building projects and all construction and infra contractors. That will encourage more and more construction and infra works and will give far higher the contribution from these sectors to the nation. It will also create the basis of future higher income tax collections.

The country is witnessing a new Income Tax Act, 2025 after nearly six decades. The new law aims at simplified and unambiguous language and reductions in number of explanations and provisos. However, in letter and substance the same law of income tax continues, which is a good sign because substantial part of the old law has been settled and controversies are known.

The people will now expect the government to address the controversies in a fair and equitable manner so that law becomes truly simple and litigations reduce. BAI would now expect that the provisions concerning the infra contractors, civil construction, real estates development would be streamlined with due appreciation that the said sectors are crucial to the development of economy of a developing country marching towards a developed economy.

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1. **Relaxation in Capital Gains taxation :**

Union Budget 2027-28 is going to be presented in the midst inter alia of high hopes on relaxations in the provisions concerning capital gains taxation of transactions in securities including shares.

The proposed relaxation is likely to be considered in the backdrop of continuous exit of foreign funds, weak returns on equity investments in around past two years. It is conspicuously observed that domestic mutual funds are supporting the share market by continuous buying courtesy rising inflows from retail investors into mutual funds. The issue is in the wake of weakening returns to what extent the retail inflows will continue. It is open secret that the share market is a combination of investment, trade and speculation.

However, a far bigger and far reasoned logic also lies in relaxing the taxation provisions in relation to real estate industry mainly the residential and commercial properties.

Why not to boost the investment and trading in real estate industry ?
Relaxation in capital gains taxation of real estate industry will increase the construction activities.

The biggest beneficiary of increased construction activities would be the State Governments. The funds received by the State Government will flow into improved infrastructure for the citizens. The increased spending for infrastructure and real estates will enhance employment potential.

The housing need of the country will get better satisfied and increased construction will make the prices somewhat competitive.

As a corollary it is also imperative that the LTCG provisions are made more friendly. For example an assessee having invested the funds in construction of a new residential house in accordance with the income tax provisions, if he does not get possession within 3 years then the LTCG benefit gets denied and the tax payer has to pay capital gains tax avoided by such investment in new house. So for the delay in the possession the assessee suffers in two ways. Whereas it is a fact that in most cases, such delayed possession is not attributable to any default on the part of the assessee. On the contrary he is a victim of the delay and a big sufferer. The paper tigers like RERA has not provided any effective support to the common man except increasing corruption at RERA level and very few have capacity to approach high courts to realise justice after lot of delay and lot of spending. In such a view of the matter, the time limit of 3 years under sections 82, 86 of the Income Tax Act, 2025 need a relook and really does not help any one as ultimately

the income tax department is also not succeeding in taxing such cases and ends up by subjecting the assessee to avoidable litigations.

2. **Section 142 of the Income Tax Act, 2025**

   **Erstwhile Section 80-IBA of the Income Tax Act, 1961**

- **Affordable housing tax benefit needed for contractors also, stamp valuation is hurdle in urban areas**

Wholesale concessions and rationalization in GST has provided required boost to the consumption section of economy. But housing is a basic need beyond the reach of a common man. The said GST cuts have not benefitted the housing industry.

Section 80-IBA of the Income Tax Act, 1961 allowed 100% deduction of the profits and gains derived from the business of developing and building rental housing project, subject to the fulfilment of specified conditions. The section needs to be revived for next five years to realise the objective of "housing for all". It is also necessary to make the section pragmatic. It is also necessary that the sticks should be so harsh and severe that the funds of a common man are not taken for a ride and for such purpose even the corporate veil may be disregarded and liability of each promoter may be made severe and endless. RERA has not served the purpose of timely possession and implementation of default consequences.

The affordable housing has been one of the successful incentives and working well for the benefit of builders, developers and the home buyers. If the scheme of the affordable housing is continued to be incentivised, it will change the hosing scenario and will provide biggest fillip to the economy.

In the urban areas the restrictive limit of stamp valuation upto Rs. 45 lakhs was not allowing the construction of affordable houses even up to the prescribed area of 60 square meters because the stamp value of 60 square meters constructed house is generally higher than Rs. 45 lakhs. Therefore, while reviving the scheme, the ceiling of stamp valuation needs to be omitted. With such removal also section 43CA continues to operate so the government is not going to lose any revenue by such removal.

Under this section tax incentive was being provided to the builders and developers. But the construction is actually done by the civil construction contractors. There is no tax incentive under this section to the civil construction contractors. They have to pay income tax. There is lot of self redevelopment of housing complex happening in the country by appointments of contractors. If contractors are provided the same incentive, the scheme will reach to its logical culmination that whoever constructs the affordable houses, will get tax incentive.

Further, unlike most other such sections, in this section no monitoring mechanism like prescribed form, certification of correctness of claim per year were provided. This leads to more scrutiny by the department and increase in litigation to the detriment of tax payers and on the other hand there may be revenue leakage to the detriment of the government.

It is therefore suggested that in section 80IBA along with the term developing and building the term constructing be added. It is further suggested that the limitation of stamp valuation up to Rs. 45 lakhs be deleted. It is further suggested that a monitoring mechanism to verity the correctness of the claim of deduction per year be empowered in the Act and be provided in the Rules.

3. **Section 57 of the Income Tax Act, 2025**

- **Erstwhile Section 43CB of the Income Tax Act, 1961:**

  **Taxation of retention money of contractors**

**Issue**

57 (3) For the purposes of percentage of completion method, project completion method or straight line method under this section,—
(a) the contract revenue shall include retention money

After the Delhi High Court termed ICDS unconstitutional the government has inserted various provisions of the ICDS into the Act itself to overcome the court judgement and to continue with its views. One of the most objectionable items in the ICDS regarding construction contractors was that ICDS provided that the retention money of the contracts will be taxed even when the conditions of retention were still pending. This was inequitable and illogical because retention money is not an income until and unless the conditions attached to the retention get satisfied.

**In this context now section new 57/ old 43CB provides that that the contract revenue shall include retention money. Such an illogical provision against the commerce and against all realities does not go well with the tax payers.**. The contractors cannot be expected to pay tax on income which has not even accrued or arisen. The income out of retention money accrues and arises only when the attached conditions get satisfied.

It is therefore suggested that section new section 57 be amended deleting clause (a) of sub section 57 that the contract revenue includes retention money.

4. **Section 58 of Income Tax Act, 2025**

   **Section 44AD of Income Tax Act, 1961**

- **New Section 58 needs to provide higher turnover limit for civil construction contractors. Suggest 10 crores for civil construction contractors.**

  **Consider allowing deduction under section 35(e ) to partnership firms**

Presently benefit of section old section 44AD is available to eligible business having total turnover or gross receipts upto Rs. 2 crores (and upto Rs. 3 crores with condition of max cash receipts upto of 5% and such an assessee is not required to maintain books of account provided he declares income from such business at 8% or in case of transactions through banking channels, 6% of the turnover or gross receipts.

New section 58 contains the same provision but excludes the enhanced conditional limit of Rs. 3 crores.

In case of civil construction contractors the turnover is generally quite high and such contractors are not so much administratively organised at they are more on the field. It is therefore a fit case in which turnover or gross receipts up to 10 crores are allowed to be covered by this section. This will also align with provisions of new section 63 (existing section 44AB ) whereby tax audit is not required subject to condition of maximum 5% cash payments and 5% cash receipts.

It is therefore suggested that section 44AD be amended to provide that turnover or gross receipts in case of civil construction contractors can be up to Rs. 5 crores to be eligible for section 44AD.

Private companies are allowed to deduction of salary/remuneration paid to directors claim directors. However, for small partnership firms which opt for section 44AD, this deduction

is not allowed. Small businesses prefer partnership structure with practically no compliance burden. It is necessary to remove the limitation upon the firms and allow deduction under section 35( e) of the Income Tax Act, 2025.

5. **Section 10(23FB) of Income Tax Act, 1961**

- **Schedule V Serial No. 6 in Income Tax Act, 2025**

  **Tax exemption for Alternative Investment Funds - Venture Capital Funds**

  **Section 10(23FB) provided exemption as follows :**

"any income of a venture capital company or venture capital fund **from investment in a venture capital undertaking** :…"

The underlined words have placed restrictions to exempt only the income from investment. Venture Capital Funds have been expanding their activities in the context of projects including infra projects. In addition to financing, they provide various types of specialized services including technical, management, decision making, data analysis and financial fields. They have specialised manpower. Supporting such services will support the success of projects. Supporting services to infra projects will support the government's top priority to attract investment in infra projects.

It is therefore suggested by the BAI that the words " from investments in a venture capital fund " be deleted or the said words be replaced by "set up to raise funds for investment". In any case the relaxation to the VCs providing services to infra projects must be considered.

6. **Withdrawal of Indexation along with reduction in tax rate- Thereafter relaxation in tax liability in limited cases– transfer of land or building or both**

- **Section 197(3) of Income Tax Act, 2025**
  **Erstwhile Proviso to section 112**

In one of the historical amendments, changing the landscape of taxation of long term capital gains which was settled since decades, the Finance (No. 2) Bill, 2025 omitted second proviso to section 48 and thereby denied the indexation benefit to the cost of acquisition and cost of improvement of a long term capital asset.

After lot of public debate, and to meet the popular expectations, the denial of benefit was relaxed before enacting the Bill but in a very limited manner.

The relaxation has been provided by insertion of a proviso to section 112 whereby it has been provided that in case the long term capital asset transferred is in the nature of land or building or both which was acquired before 23rd July, 2024 then in that case the resident assessee being an individual or HUF will have the benefit of paying lower of the tax out of two computations one being long term capital gain computed with the benefit of indexation and taxed at 20% and two being long term capital gain computed without indexation and taxed at 12.5%.

However, the above relaxation keeps the amount of resultant capital gains on higher side. While the withdrawal of benefit affected, the computation of capital gains, and in some cases, the tax liability on capital gains, the relaxation has been provided only in respect of the tax liability.

It is therefore suggested that even though the relaxation has been provided to only an individual and HUF, but the same should be provided in a manner that if the assessee opts for provisions of indexation then he should be allowed benefit of computation of capital gains with indexation and tax thereon @ 20%.
Further, the relaxation should be extended to a non resident individual and HUF.

The above representation continues to be valid because the corresponding section in the Income Tax Act, 2025 has been cast on the same lines and with the same results.

7. **Section 67(14) of the Income Tax Act, 2025**

**Erstwhile**

**TDS on Joint Development Agreements**

**Section 194IC of Income Tax Act, 1961**

**Section 393(1) Table Sr No. 3(ii)**

**Section 45(5A) of Income Tax Act, 1961**

Existing Section 194IC provides TDS @10% now new section 393(1) Table Sr No. 3 (ii) on cash consideration in a joint development agreement to which provisions of existing section 45(5A)/new section 67(14) apply. But where provisions of section 45(5A)/67(14) apply, the consideration is not at all taxable in the year of joint development agreement, but is taxable in the year of Occupation Certificate. So the TDS would be carried forward. Sometimes, the project gets completed after many years. In most redevelopments, due to passing on of the TDR entitlement, there may be nil or negligible taxability on application of the evolved law on the subject. In any case, it is not rational for the government to say on the one hand that tax will arise only on occupation certificate, but on the other hand, to withhold tax at threshold itself on the cash component at high rate of 10%.

It is therefore suggested that rate of TDS on joint developments referred to in the new section 393(1) Table 3(ii ) be kept at 1% of cash consideration. This will keep track on such transactions.

8. **Section 35( e) and 35( f) of the Income Tax Act, 2025**
   **Erstwhile :**
   **Amendment w.r.t. taxation of consortiums/J Vs/AOPs**
   **Section 40(b) and 40(ba) of the Income Tax Act, 1961**

Substantial number of transactions take place as joint ventures or AOPs.
In commercial understanding between the JV partners, there is not much difference between a partnership firm and a joint venture. In both cases, it is usual to give remuneration to working partners and interest on capitals introduced by them. But under the Income Act while remuneration and interest to partners are allowable deduction under existing section 40(b) but under existing section 40(ba) such remuneration, interests to JV partners are not allowable for deduction.

Now under the Income Tax Act, 2025 the said provisions have been recast in section 35 (e) and section 35(f).

Real estate industry needs encouragement for development and flexibility to deal with complex and varied situations. Providing for deduction of remuneration and interests on the lines of partnership firm will help the industry more comfort and equity. JVs are preferred mode to entering into collaborations for various legal and practical reasons. Therefore, it is necessary that the provisions of section 35(f) are brought at par with section 40(e ).

It is therefore suggested that section 35(f) be amended to provide for remuneration and interests to JV partners on the lines of section 35( e).

9. **Section 138 of the Income Tax Act, 2025**

**Erstwhile Section 80IA(4) of the Income Tax Act, 1961 (benefits discontinued since some years.**

**To encourage private participation in infrastructure development of the country**

**Suggest :-**

**Revival with pragmatism of benefits as were in 80IA(4) and liberal guidelines for ongoing infra development projects :**

**Development, operation and maintenance of infrastructure facilities**

**Suggestion to lay down positive and liberal guidelines w.r.t. "developer" vis a vis "works contractor" for ongoing projects**

Section 138 is to promote and encourage private participation into development of infrastructure of the country. It applies to the enterprises which inter alia started development of infrastructure facilities till 31st March, 2016. It applies for twenty years from the year of commencement of inter alia of development of infrastructure facility. It is suggested that the section be revived to support private participation in infrastructure development of the country. The suggestion is in line with the policies of the government to transform the country to a developing economy.

This section applies to--

(i ) any enterprise carrying on the business of (i) developing or ( ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility.

There are basic qualifying conditions that : it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corpora-tion or any other body established or constituted under any Central or State Act; that it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility.

Explanation to the said sub section defines the "infrastructure facility".

Explanation introduced by Finance (No.2) Act, 2009 w..e.f. 1.4.2000 clarified that for the removal of doubts, it is hereby declared that nothing contained in this section shall apply in relation to a business referred to in sub-section (4) which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by the undertaking or enterprise referred to in sub-section (1).

Circular No. 3 of 2008 has clarified that the Explanation denies the benefit of the sub section to persons who merely execute the civil construction work or any other works contract. The incentive has all along been intended to benefit developers who undertake entrepreneurial and investment risk and not contractors who only undertake business risk.

The said Circular has clarified that in a case where a person makes the investment and himself executes the development work *i.e.,* carries out the civil construction work, he will be eligible for tax benefit under section 80-IA. In contrast to this, a person, who enters into a contract with another person (including Government or an undertaking or enterprise referred to in section 80-IA) for executing works contract, will not be eligible for the tax benefit under section 80-IA.

After introduction of the above Explanation, and despite the above circular, it is observed that the assesses claiming deduction under section 80IA(4) are frequently denied the benefit on the reasoning that the assessee is not a developer but he is a contractor.

The distinction between the term “developer” and the term “works contractor” has been quite a thin line and despite so many tribunal and high court decisions having laid down various criteria distinguishing between a developer and a contractor, most lower authorities are denying the benefits to the assesses on the reasoning that the assessee is not a developer. The litigations are escalating to tribunals. It takes a lot of time and long journey coupled with recovery proceedings and concealment proceedings before an assessee gets justice.

The representation herein is only in respect of ( i ) developing infrastructure facility.

It is absolutely necessary that when the entire project has been carried out by the assessee, when the funds have been infused by the assessee from time to time and when the assessee has undertaken to bear the consequences of delays or work deficiencies, then the assessee be treated as a developer for the purpose of section 80IA(4).

Government wants to build infrastructure in the country. The need of infrastructure is paramount for the economic development of the country. The private participation is not so much forthcoming considering the low rate of return compared to many other businesses. To promote private participation, section 80IA(4) provides hundred percent deduction from profit inter alia from developing the infrastructure facilities. An assessee enters into contract with the government relying upon the tax benefits. However, on the field the controversies arise more particularly in the matter of whether the assessee is a developer or a works contractor. Due to litigations, the liquidity of the assessee gets blocked in on account payment of tax in view of stringent recovery proceedings, the energies and the resources of the assessee get blocked in dealing with adverse assessment orders and appeal orders, and concealment proceedings. The capacity of the assessee, who is a part of the building infrastructure facilities of the country gets diverted and diluted. Ultimately the assessee succeeds. Government does not gain any benefit but huge harm is done to the assessee and the infrastructure development of the country.

This representation is not intended to say that allow the benefit to assessees who are not developing the infrastructure facility.

This representation is to say that lend certainty as to whether a project qualifies for the benefit of section 80IA(4). And lend such certainty at the outset only so that if a project does not qualify for such benefit then the assessee will quote accordingly to take up the project.

The suggested changes will save the time and energy of the income tax department in dealing with long drawn litigations. The suggested changes will require spending time of the income tax department in a constructive task of determining at the outset only as to whether a project qualifies for the benefit of section 80IA(4).

It is further suggested that allow the benefit of section 80IA(4) to assessees who have developed/constructed the entire of the infrastructure project of the government, state government or local authority without going into the controversy of "developer" vs "works contractor".

The ideal way to avoid the litigations and to lend certainty to the assessee undertaking the project, would be that a mechanism be created by the central board of direct taxes in which the central government, state government or local authority, as the case may be, should first submit the contract document under which the infrastructure project is being awarded, to the Income Tax department for an advance ruling whether based on terms and conditions of the contact, the project is eligible for section 80IA(4) or not.

Lending certainty to the issue of eligibility of the project under section 80IA(4) will also enable the assessee to respond confidently to the tenders being floated.

Such steps of assurance to the assesses will encourage the participation for development of the infrastructure projects.

All above suggestions and the new mechanism as suggested above may be considered only if the provisions of section 80IA(4) are revived.

For the ongoing projects, it is very much necessary to lay down guidelines with reference to the terms “developer” vis a vis “works contractor”; the guidelines should be liberal and positive in favour of the assessees.

10. **Timely payments to Micro, Small Enterprises Relaxation sought in Section 37(2)(g)**

    **Erstwhile 43B(h)**

A change introduced by the Finance Act, 2023 with effect from assessment year 2024-25 to help micro and small enterprises to receive timely payments might have had the unexpected effect on the buyers in respect of their liquidity and far reaching adverse effects on the disallowances on account of non payments by appointed date.

Section 37(2)(g) allows deductions for certain revenue expenses only if payments thereof are actually done during the relevant previous year or till the due date filing return of income.

Income Tax Act, 2025 read with Micro, Small and Medium Enterprises Development Act, 2006 are providing some carrots and some sticks to the purchasers ( including service recipients ) from the Micro and Small Enterprises with an intention to ensure timely payments by such purchasers to the SMEs.

Carrot and Sticks :

Carrot :

Under the provisions contained in section 16 of the MSMED Act, for payments beyond the agreed credit period (maximum 45 days) or in the absence of agreed period beyond

15 days from the date of acceptable of supplies, the purchaser has to pay to the SMEs Interest at three times the Bank Rate notified by RBI with monthly compounding.

**Stick No. 1**

And in view of section 23 of the MSMED Act, 2006 such interest is not allowable as expense under the Income Tax Act, 1961.

**Stick No. 2**

By Finance Act, 2023 a new provision w.e.f. A Y 2024-25 was introduced by adding sub clause (h) to section 43B of Income Tax Act, 1961__

(h) any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 54b of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)

Provided that nothing contained in this section, except the provisions of clause (h) shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

May act as a discouragement to buy from MSME

Effectively the same adverse exception has been carved out in section sub section (2)(g) read with subsection (3) of the section 67 of the Income Tax Act, 2025.

It is therefore suggested that from sub section (3) of section 67 the words “except the sum referred to in clause (*g*) thereof” be considered for deletion.

Ultimately buyers will count cost of credit or no credit trade practice beyond 45 days or not

Disallowance should be commensurate with the quantum of delay

Say the delay of 1 month, disallowance may be 10%  and so on

Unjust enrichment to exchequer

Real benefit to MSE or the Government

On the lines of MAT, allow credit for the tax payable on disallowance

The stringent provisions are adversely affecting even the interest of MSMEs
So allow the MSMEs to decide the trade terms reg credit period .

**11. Support the mobility of employees in infra industry**

**Suggest amendment to Schedule II of the Income Tax Act, 2025 which corresponds section 10 of the Income Tax Act, 1961**

The infra projects are more often situated far away from the town of the residence of employees. If the employee joins such distant placed infra project, then he may have to travel frequently to his town of residence. The expenditure of such travel is due to the employment at a distant place. The infra project contractor may like to reimburse the employee with such travel expenditure.

It is suggested that to enable the infra project to attract talents from distant areas, **such travel allowance paid by the employer to the employees to travel to their town of residence, be exempted under Schedule II of the Income Tax Act, 2025.** This will support the mobility of skills for infra projects.

For near distance travel financing of purchase of vehicles by the employers to the employees may also be provided appropriate incentives.

**12. Limit of housing loan interest on self occupied house property :**

**Section 21 and 22 of the Income Tax Act, 2025**

**Erstwhile Section 23 and 24 of Income Tax Act, 1961**

Perusal of section 21 and 22 of the Income Tax Act, 2025 which correspond to section 24 read with section 23 of the Income Tax Act, 1961 it transpires that a distinction has been made providing that the interest on housing loan shall be restricted upto Rs. 2 lakhs per year in cases of self occupied house properties. This is highly unreasonable. This is in contradiction to the position that if the assessee has rented his house property then there is no limit for deduction on interest on housing loan. The distinction effectively means that the tax payer having extra house and who is getting rent is allowed far higher tax benefits. BAI does not object to this. But BAI finds it highly inequitable that the tax payer having only house and no rental income is treated harsh due to limitation of the deduction upto Rs. 2 lakhs. This tax payer in most cases is not so well off compared to the tax payer who has actually rented the house property.

**13. section 22(2) of the Income Tax Act, 2025**

**Section 24(b) of the Income Tax Act, 1961**

- **Deduction of interest on housing loan paid during construction period**

More of housing loans are taken for booking under construction houses. At the same time even after enactment of RERA, the under construction purchases are not so much happening. In this context, under section 22(2) of the Income Tax Act, 2025 corresponding to section 24(b) of the Income Tax Act, 1961 provides that interest paid on such housing loan is allowed but only from the year of completion of construction in five equal installments. This is a discouragement as while on the one hand the buyer suffers when the completion of the project is delayed, on the other hand he does not get deduction on

the interest actually paid by him. This is also a discouragement to the development of real estate industry. It is therefore logical and equitable that such interest be allowed in the year of payment and no adverse consequence should follow in the cases of projects not getting completed in time or even not getting completed. Any adverse consequence will add to suffering of the buyer.

**It is therefore suggested that under new section 22 of the Income Tax Act, 2025, interest paid during construction period on a housing loan be allowed as deduction during the year of payment and without any reference to construction completion.**

**14. Section 21(5) of the Income Tax Act, 2025**
**Erstwhile Section 23(5) of the Income Tax Act, 1961**
**Section 109 and 110 of the Income Tax Act, 2025**
**Erstwhile Section 71 and 71B of the Income Tax Act, 1961**

- **Tax on unsold properties held as stock in trade is adding to the problems of the industry**

**Restriction on set off of loss upto only Rs. 2 lakhs**

Real Estate industry has been ailing due to lack of financial support, higher input costs coupled with lowering of prices due to non affordability to the buyers. In the present times, a builder is far willing and eager to sell his constructed properties. Section 21(5) of the Income Tax Act, 2025 corresponding to section 23(5) of the Income Tax Act, 1961 provides that in respect of unsold property held as stock-in-trade after 2 years of construction completion, the assessee has to pay tax on notional rental income thereon. While on the one hand the builders and developers are struggling to sell their constructed units, on the other hand non sale thereof is attracting tax on notional rent therefrom.

Most of projects are done with borrowed funds. Even otherwise there is an opportunity cost of funds locked in the unsold properties. The price appreciation which was once quite encouraging to hold the properties is now virtually missing. Therefore, the builders and developers do not get much benefit by not selling the constructed properties. Under the circumstances, taxing unsold properties held a stock in trade is not serving any economic purpose except punishment to the industry. New Section 21(5)/ existing section 23(5) providing for deemed rental income and making it taxable after two years of property construction appears to be harsh to genuine developers who are unable to dispose off their stock in the slump.

Further, Section 109 of the Income Tax Act, 2025 corresponding to section 71(3A) of the Income Tax Act, 1961 provides a ceiling of Rs. 2 lakhs for set off of loss under the head house property against any other head of income.

Combined effect of application of sections 21(5) and 109 earlier section 23(5) and 71(3A) is proving double sufferings to the builders/ developers without any substantial gain to the exchequer. On the contrary it is harming the ailing industry.

It is therefore suggested that provisions of section 21(5) be deleted or kept in abeyance for 5 years and builders and developers be excluded from application of provisions of section 109.

**15. Section 28(via)**

## Section 26(j)

- ## Conversion of stock in trade into capital asset

Finance Act, 2018 introduced a new provision to the effect that when a stock in trade is converted into capital asset, the difference between the fair market value of the asset on

the date of conversion less cost of inventory is the business income. Going ahead when such converted asset is sold or otherwise transferred the capital gain is to be computed as difference between fair market value of the asset and the net sale consideration. Presently, the tax on business income becomes payable in the year when the stock in trade is converted into capital asset. However, at such conversion there is only notional income in the hands of the assessee. The real income may be earned only when the capital asset is sold or transferred. The present set of provisions is creating hardship upon the assessee as he has to pay tax on the notional income without its realisation. This hardship can be relaxed by providing on the lines of section 71(6) of the Income Tax Act, 2025 corresponding to section 45(2) of the Income Tax Act, 1961 the deferment of tax on such business income to the year of sale or transfer of the converted capital asset.

It is therefore suggested that the tax on business income on conversion of stock in trade to capital asset be deferred to the sale or otherwise transfer of such converted capital asset.

**15. 67(14) of the Income Tax Act, 2025**
**Erstwhile Section 45(5A) of the Income Tax Act, 1961**

- **Taxation of joint development agreements**

Currently, relaxation of postponement of taxation till the date of completion certificate of the building is granted to individuals and HUFs. There is no logic to exclude other types of assesses. The amendment had come in acceptance of the fact that taxation of transfer of development rights at the time of execution of development agreement is a hardship. To support the real estate development in urban areas, the amendment had come by introduction of section 45(5A) in the Income Tax Act, 1961 postponing the taxation of resultant capital gain in the hands of land owner to the year of completion certificate. The section continues in the Income Tax Act, 2025 as section 67(14). Once this hardship is recognised, it should be recognised in case of every assessee. Further the hardship is there

whether the land is transferred as capital asset or stock in trade. Therefore, the benefit of section 67(14) needs to be extended to all types of assessees and all types development rights whether the land is held as capital asset or stock in trade. With increasing population and availability of land being scarce in cities and towns, horizontal expansion not possible, government increasing the developmental potential, the vertical expansion is the only possible option. In such a situation the existing land owner transfers the development rights to a developer with comparatively small amounts received as consideration at the time of execution of the development agreement.

Section 78 of the Income Tax Act, 2025 erstwhile section 50C is applicable to section 67(14) of the Income Tax Act, 2025 corresponding to section 45(5A) of the Income Tax Act, 1961but only partly in as much as the relief provisions contained in section 78/50C are not incorporated in section67(14) /45(5A). It is pertinent to mention here that the constitutional validity of section 50C was upheld on consideration inter alia of the relief provisions contained therein.

Section 67(14)/45(5A) covers only registered development agreements. The case laws on taxation of development agreements do not make distinction between registered agreements or unregistered agreements. Therefore, section 67(14)/45(5A) needs to cover unregistered agreements also.

While the taxation of capital gains on transfer of development rights have been deferred by this section, the exemption provisions contained in section 82/54, 83/54B, 86/54F, 87/54G, 88/54GA have not been amended to take care of the capital gains arising under section 65(14)/45(5A). This creates practical difficulty to invest resultant capital gains to comply with exemption sections.

It is therefore suggested that section 67(14) which corresponds to section 45(5A) be amended to include all types of assessees and to cover transfer of development rights whether held as capital asset or as stock in trade. Benefit of section 78 of the Income tax Act, 2025 which corresponds section 50C of the Income Tax Act, 1961 be fully allowed to cases covered by section 67(14)/45(5A). Unregistered agreements be covered in section 67(14). The time limits under section 82, 83, , 86, 87, 88 be extended in alignment with section 67(14).

## 16. Section 109 and 110 of the Income Tax Act, 2025

## Erstwhile Section 71(3A) read with section 71B of the Income Tax Act, 1961

- **Loss from House Property Restrictions on set off and carry forward and set off**

Section 109 and section 110 of the Income Tax Act, 2025 corresponding to Section 71 (3A) of the Income Tax Act, 1961 has placed a restriction that loss arising under the head "Income from House Property" can be set off against income under any other head but to the extent of only Rs. 2,00,000/- and the excess loss remaining unabsorbed can be carried forward up to subsequent 8 assessment years.

This restriction is a big discouragement to the tax payers including builders and developers. The restriction is discouraging growth of housing market.

The restriction of set off of loss will not promote development of housing projects. The carry forward of the unabsorbed loss under Income from house Property is allowed for a period of 8 assessment years. However, practically there would not be any positive income since the interest cost is very high.

It is therefore suggested to withdraw the said restriction. Alternatively, the limit of Rs 2 lakhs may be raised to atleast Rs 10 lakhs.

## 17. Section 123 read with Schedule XV of the Income Tax Act, 2025
## Erstwhile Section 80C of the Income Tax Act, 1961

- **Includes deduction in respect of housing : Provide separate limit for housing related payments**

The deduction limit under this section is Rs. 1.50 lakhs.

The housing related payments that is repayment of housing loan from banks and including payment of stamp duty, registration charges towards acquisition of residential house property (for brevity "housing benefit").

In most of the cases, the housing benefit is not at all available to the tax payers for the reason that a tax payer having committed instalments of premium in respect of LIC Policy and Pension plans etc. would have utilised entire or most part of limit of Rs. 1.50 lakhs.

Housing benefits allowed under section 123/80C are laudable and can be really helpful to supplement the efforts of the government to achieve "housing for all" and can be most helpful in acquisition of affordable housing.

It is suggested that only if a special additional limit of Rs. 1.50 lakhs is set up, then the benefits will make positive impact encouraging acquisition of residential houses and home loans.

**18. Section 131 of the Income Tax Act, 2025**

**Erstwhile Section 80EEA of Income Tax Act, 1961**

- **Tax incentive for interest on loan for affordable housing**

In the context of section 80EEA of the Income Tax Act, 1961, the Explanatory Memorandum to the Finance Bill provided as follows :

"In order to provide an impetus to the 'Housing for all' objective of the Government and to enable the home buyer to have low-cost funds at his disposal, it is proposed to insert a new section 80EEA in the Act so as to provide a deduction in respect of interest up to one lakh fifty thousand rupees on loan taken for residential house property from any financial institution subject to the following conditions:"

But Section 80EEA(1) reads as under:

"(1) In computing the total income of an assessee, being an individual not eligible to claim deduction under section 80EE, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property."
Now Section 131 of the Income Tax Act, 2025 contains verbatim the same provision.

It can be conspicuously seen that while the intention of the government was to allow benefit of interest deduction in cases of loans taken to book under construction houses also, but the section itself has not been drafted to include such intention.

This is not the intention of the government and on the contrary the intention is to provide impetus to housing for all by construing more houses. Therefore it is a case in which a clarification needs to be inserted so that the benefit of interest deduction by booking under

construction houses is available retroactively and intention of the government gets spelt out on law.

Further the limit of Rs. 45 lakhs stamp valuation is not workable as many affordable houses in urban and semi urban areas cannot be constructed up to the allowable square meters with the limitation of Rs. 45 lakhs.

Further the condition in section 131 (existing section 80EEA) that the assessee should not own any residential house property on the date of sanction of loan is in contradiction to the provisions of section 82 of the Income tax Act, 2025 (existing section 54) and section 21 of the Income Tax Act, 2025 (existing section 23) because section 82/54 now allows owning 2 residential houses and section 23 of the Income Tax Act, 1961 was also amended to provide that an assessee can claim 2 residential houses as self occupied and the section 21 of the Income Tax Act, 2025 continues the same position.

Therefore it is suggested that under section 131 of the Income Tax Act, 2025 also the condition be amended to enable benefit of interest deduction to the assesse owning up to 2 residential houses.

**19. 393(1) Table Serial number 6(i) in Income Tax Act, 2025**
**Erstwhile Section 194C of Income Tax Act, 1961**

- **TDS on contracts**

The economic activity has quite enhanced over a period of years. The GST and reverse charge mechanism and various PAN and TAN requirements have plugged many leakages. Under the circumstances, threshold of Rs. 30,000 for one transaction and threshold of Rs. 1,00,000 in aggregate under section 194C require updation up to Rs. 1,00,000 per transaction and Rs. 5,00,000 in aggregate.

## 20. Section 194N of Income Tax Act, 1961

Section 393(3) Serial No. 5 of Income Tax Act, 2025

- **TDS on cash withdrawals**

Section 194N of the Income Tax Act, 1961 now in the Table in Section 393(3) at serial number 5 provides TDS @ 2% on cash withdrawal exceeding Rs. 1 crore in a year from bank account(s).

The civil construction contractors and infrastructure contractors take up projects in very remote areas where no basic facilities are available much less the banking facilities. Many materials are procured from unorganised sectors who do not have banking facilities. Workers are to be paid daily wages in cash only. The number of workers in infra projects is very high.

Development of infrastructure and construction industries are one of the priorities of the Government.

Considering the above factors, the provisions of Section 393(3) Serial No. 5 of Income Tax Act, 2025 should not apply with reference to infra and civil construction projects.

Alternatively, the limit of Rs. 1 crore needs to be enhanced to Rs. 10 crores in cases of contractors engaged in infrastructure projects and Rs. 5 crores in cases contractors engaged in civil construction contracts.

## 21. Give RERA effect to taxation of builders and developers

Builders and developers have to pay tax on income accruing out of sale of units under construction. The department insists upon percentage completion method. Under the RERA age, it is absolutely necessary to recognise that the RERA law gives an absolute

right to the unit buyer to seek refund of money with interest and compensation on delay beyond assured date. This refund provisions will be more visited in the downward market by the unit purchasers. Under such circumstances, it will create a very difficult situation for the builders and developers as by application of percentage completion method, the tax might have been paid and thereafter if sale of some units get cancelled, there is no right of refund. At the most, such tax can be adjusted on subsequent sales. However, if subsequent sales don't happen then it will be an additional punishment to the builder/developer that he has been subjected to refund and he has paid off part of the tax also on percentage completion method. It is therefore, absolutely necessary that the builder/developer is given an option to recognise sales only on project completion method. This becomes further imperative as the 70% of the sales proceeds cannot be even touched by the builder except for meeting cost of construction and cost of acquisition of land. There may be stoppages of constructions for various reasons. Under such circumstances, money will lie idle in designated bank account.

It is suggested to provide impetus to the real estate constructions. The present RERA law has stringent constraints upon the project and the developer. The same may be supplemented by the incentives. For example, once a project is completed in all respects as per the RERA deadlines, and as per assurances under RERA, such projects can be made eligible for tax benefits even thought is not covered as affordable housing project.

To deal with the realistic problems, for builders and developers, consider to permit carry back of losses and introduce suitable legislative amendments for its application.

**22. Income Tax Appellate Tribunal :**

It has been proposed to make the proceedings before ITAT also faceless. This proposal will affect not only the assessees but also the income tax department. (a) The ITAT is an

independent body settling most of the disputes relating to direct taxes. (b) Though the ITAT has been set up under the Income tax Act, it is a quasi judicial body functioning under the Ministry of Law and Justice. (c) More than 80% of the disputes under the Income tax Act are facts related and they get settled at the ITAT level, where a fair opportunity of hearing is granted both to the assessees and the Revenue. (d) The ITAT is a final fact finding authority and its decision on facts is final. Hence it is imperative for assessee and the revenue to present the facts properly before the ITAT and the facts so settled by the ITAT would determine the fact of appeals filed before Hon'ble High Courts/Supreme Court. Both the revenue and assessees are challenging the orders of ITAT before these higher forums. Proper presentation of facts would be possible only if the hearing happens physically and both the assessees/revenue could ensure that the facts are properly recorded and interpreted by the ITAT. The proposal to make ITAT also faceless would put both assessees and revenue in much difficulties. (e) While the assessing officer and Commissioner of Income tax (Appeals) are manned by the officials from the Income tax department, the ITAT is manned by Lawyers, judicial officers, Chartered Accountants and departmental officials. Hence it is a completely neutral body affording fair opportunity of hearing to both assessees and Revenue. As of now, it is the only place, where both the assessees and Revenue could present/defend the cases by making the required submissions. (f) Hence, making ITAT faceless would infringe the rights of both the assesses and revenue. Further, it may affect the rendering of justice to both the parties.

**23. Filing Returns by due date :**

Filing of returns of income within the time allowed u/s 139(1) of the Income Tax Act, 1961 now section 263(1) of the Income Tax Act, 2025 is mandatory to claim deductions u/s 10A, 10AA, sec. 80 deductions etc. Since these incentive provisions have been incorporated to achieve certain social objectives, the condition to file return within the time limit given in sec. 139(1) will affect the achievement of those social objectives.

**24. Suggestions to reduce pendency before CIT (Appeals):**

Retired PCIT, CCIT, PCCIT may be employed for an adhoc period to dispose of the appeals pending before CIT (Appeals). It is also worth to employ retired ITAT members on adhoc basis to dispose of appeals pending before CIT(Appeals). Since the Government also promoting lateral entry of professionals, leading professionals may also be employed on adhoc basis to dispose of appeals pending before CIT (Appeals).

**25. New Regime incentivized, but ignoring virtues of old regime may cost heavily in vulnerable times Section 202 of Income Tax Act, 2025**

Since two years, the tax slabs and rates applicable to individual, HUF, association of persons, body of individuals, artificial juridical person opting for new tax regime under the provisions of section 202 of the Income Tax Act, 2025 corresponding to section 115BAC of the Income Tax Act, 1961 have been relaxed coupled with a big booster by the tax rebate under section 87A making such tax payer free from payment of tax even upto total income upto Rs. 12 lakhs plus if applicable the standard deduction. However, there was no change under the old regime. Under the old regime on consideration of rebate section 87A, the total income of such asseseee upto Rs. 5 lakhs plus if applicable the standard deduction, remained tax free.

The incentive to invest in small savings scheme has been given a go bye.

This is very dangerous for a common man and for the economy as a whole in vulnerable times.

**26. Section 194T of the Income Tax Act, 2025**

**Section 393(3) Table Serial No. 7**

- **Payments to partners of firms.**

The 194T has been operative wef 01.04.2025 requiring TDS @ !0% payments by a partnership *paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, including the capital account.*

Threshold is Rs. 20,000 during the financial year in respect of each partner.

The rate of 10% appears quite on higher side. May kindly consider to keep the rate @ 2% and the threshold may be increased to Rs. 100000/- or firms having turnover upto Rs. 3 crores may be excluded from the provision; so a to reduce compliance burden upon small firms.

**27. Tax Audit time limit vs Penalty**

**Section 44AB and 271B of the Income Tax Act, 1961**

- **63 read with section 446 of the Income Tax Act, 2025**

Tax audit due date is a perennial problem followed by rituals of extensions and in recent times regular judicial interventions. It is suggested that if the penalty under section 446 is tagged to the period of delay by imposing late fees at say Rs. @500 per day subject to maximum limit fixed by the said section, there may be relaxation and corresponding extension to the due date of filing returns may not need extension.

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# *PRE-BUDGET MEMORANDUM*

# *2027-28*

# *INDIRECT TAXES*

## BUILDERS' ASSOCIATION OF INDIA

## MUMBAI

**E-Mail : baihq.mumbai@gmail.com**

# INDIRECT TAXES

# GOODS AND SERVICES TAX

We are thankful to the Government of India and GST Council for the process and other reforms recommendations in the 57th Meeting of the GST Council held at New Delhi on 08th October, 2026 relating to

- GST REFUNDS IN FASTERWAY
- SIMPLICATION OF GST PROCEDURES
- MATERIALITY BASED REFORMS

and also for the earlier NEXT GENERATION GST REFORMS in the provisions of GST Acts and particularly in rationalization of GST rate structure.

**THE FOLLOWING ISSUES ARE OUR REQUEST FOR YOUR ATTENTION AND EARLIEST SOLUTION**

## I. PERMANENT MEASURES TO SUPPORT THE CONSTRUCTION INDUSTRY

**A) Request for an additional structure for payment of GST.**

**B) Request for special mechanism for payment of GST for contract works relating to Government and its related authorities**

**C) Refund of excess ITC should be allowed as inverted duty structure refund considering ITC on account of services also**

**D) Earliest inclusion of Petrol, Diesel, etc., under GST regime**

## II. SUBMISSION FOR IMMEIDATE ATTENTION:

**(A) New taxation immunity scheme to be announced**

## III. GST ISSUES ON ADVANCE RECEIPTS BY WORKS CONTRACTORS

## IV. INPUT TAX CREDIT –NEEDS AMENDMENTS

## V.GENERAL

## VI. BUILDERS AND DEVELOPERS ISSUES

## I. PERMANENT MEASURES TO SUPPORT THE CONSTRUCTION INDUSTRY:

## I. A. REQUEST FOR AN ADDITIONAL STRUCTURE FOR PAYMENT OF GST

Our members are executing works in various states with multiple GST registrations. Our nature of construction service is based on the awarding of tenders by the Government. Due to various practical reasons, we are unable to continue our works in few States.

We are making a request to Honorable Finance Minister to look into the GST payment structure for Government and its related works in the following methods.

### a) EXISTING PAYMENT STRUCTURE:

The existing structure of submission of GST returns paying output tax by adjusting Input Tax Credit (ITC) is to be continued.

### b) COMPOSITION SCHEME OF GST @ 5% WITHOUT TAKING INPUT TAX CREDIT (ITC) ONLY FOR GOVERNMENT AND ITS RELATED WORKS

**Besides the above existing structure**, **we request to allow us to make payment on composition Scheme of GST @ 5% WITHOUT taking Input Tax Credit (ITC).**

- The dealer having multiple registrations is to be allowed to avail the above scheme for each State based on his declaration filed to opt for composition scheme.

- The dealer should have a choice of composition scheme for some States and regular scheme for other States, at the option exercised by the dealer.

- A proper set of procedures may be issued to avoid loss to exchequer and also benefit to works contractors executing works for Government and its departments.

## I. B. REQUEST FOR SPECIAL MECHANISM FOR PAYMENT OF GST FOR CONTRACT WORKS RELATING TO GOVERNMENT AND ITS RELATED AUTHORITIES

The works contract service to Governments, Governmental authority, Government entity, local authority, Union territory are charged at 18% and predominantly Earth works related contracts are charged at 12% as per the notifications issued.

Presently all most all the works contract services are charged at 18%.

The time of supply is the practical issue in the case of above Government and its related authorities. They are preparing the work bills as per their measurement books, etc., which are maintained by the Government Departments.

The contractors are facing lot of practical difficulties in issue of invoices starting from date of stage completion of work, quantity of measurement, etc., to value of bills.

There is lot of delay in payment of bills even after the date of work completion by most of the Government authorities.

Hence, it is requested to amend the provisions of GST Act **with a special mechanism to allow the Contractors to make GST payments for Government related works ON RECEIPT BASIS OR SOME OTHER SPECIAL MECHANISM.**

Government and its related authorities works are transparent one. There will not be any loss to the exchequers.

## I. C. REFUND OF EXCESS ITC SHOULD BE ALLOWED AS INVERTED DUTY STRUCTURE REFUND CONSIDERING ITC ON ACCOUNT OF SERVICES ALSO

Presently Works contract services are considered as Services as per CGST Act, 2017 and there are numerous issues before department at the time of filing of refund in inverted duty structure. Department always consider the contractors' services as similar to real estate services, which is not the case.

a) A clarification may be issued by department in this aspect with clarification of refund as Inverted duty structure. Amendment is also required to consider ITC of Input services too as part of eligible ITC and allow refund of excess ITC like credits in cash ledger.

b) Allow to file and get refund of excess ITC credit accumulated by construction concerns where the GSTIN registration are surrendered by Dealer.

## I. D. INCLUSION OF PETROL, DIESEL, ETC., UNDER GST REGIME

Our construction industry is facing various struggles post Covid-19 pandemic. Short supply of materials, abnormal fluctuated increase in prices, movement of migrant labours, non availability of skilled labour, belated payment by contractees (including Government departments) are playing significant delay in executing works.

Compare to other industries our industries are time bound and completion of work in

time is foremost criteria. Our members are struggling to complete the work in time and also running short of working capital.

One of our major expenses are relating to purchase of petrol, diesel, etc., for maintenance of vehicles and machinery. Non inclusion of these products under GST REGIME is affecting our industry to the extend of value added tax paid. We are unable to get input tax credit for payment of VAT on these products.

**SUGGESTION:**

***Earliest inclusion of petrol, diesel and other petroleum product under GST REGIME may be an additional incentive which will give a boost to our industry.***

**II. SUBMISSION FOR IMMEIDATE ATTENTION**:

**II. A. NEW TAXATION IMMUNITY SCHEME TO BE ANNOUNCED**

We are thankful to the GST Council for recommends in the 53rd GST Council Meeting waiving interest and penalties for Demand notices issued under Section73 of the CGST Act (i.e., the cases not involving fraud, suppression, or willful misstatement, etc.) for the fiscal years 2017- 18, 2018-19 and 2019-20, if the full tax demanded is paid up to 31.03.2025.

The time limit to avail input tax credit w.r.t. any invoice or debit note under Section 16(4) of CGST Act, through any GSTR-3B return filed up to 30.11.2021 for Financial Year 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be 30.11.2021.

and other recommendations

Keeping into consideration of the enormous practical difficulties during transition to GST mechanism, new taxation Immunity scheme needs to be announced suitably. The genuine regular tax payers should be convinced properly.

This one more chance of immunity scheme may leads to drop lot of pending and new litgations with departments and save the considerable time of both the dealers and departmental officers.

- Liberal view shall be taken for Time limit for taking input tax credit (ITC) pertaining to FY 2017-18 to FY 2022-23 and additional opportunity of time to be allowed for filing of the corresponding Additional Returns and Reports.

- Further time limit for amending transactions of 2017-18 to 2022-23 in GSTR 1 shall be allowed as it facilitates reflection of such amended details in GSTR 2A

of the recipient.

- It may be proposed an one time measure for suitably waiving interest, penalties for all returns including GSTR 9, 9A, 9B and 9C filed for FY 2017-18 to 2022-23.

- More clarity to be given for already assessment completed cases and the due share of benefit to be passed on to the genuine dealers who have already discharged the tax, interest and penalty in due care and respect.

## III. GST ISSUES ON ADVANCE RECEIPTS BY WORKS CONTRACTORS

## III.A. NON DEDUCTION OF TDS ON WORKS CONTRACT ADVANCES

**Issue:** GST is payable on mobilisation advances received from Government and other contractees. If the same contract is subcontracted and mobilisation advances are paid to subcontractors, GST is again charged by such subcontractors and it is not available for utilisation till the time it is adjusted from the advance.

In infrastructure projects, there is a huge time gap between receipt of mobilization advance and adjustment of such advances.

GST liability on the receipt of mobilisation advances by construction concerns should be removed due to the following:

- For the receipt of mobilisation advances, contractors are requested to furnish a bank guarantee to their clients (ie) Most of the Mobilization Advances are Secured by Bank Guarantees (Secured Borrowings).

- The mobilization advance is released by the customer against a bank guarantee. Contractors avail credit facilities from banks by pledging their property as collateral, typically with 20% fixed deposits and personal guarantees, and by executing loan documents in accordance with the bank's guidelines.

- Clients are also not providing mobilisation advances payments along with GST. (ie) lum sum payments.

- GST is liable to be paid by the contractor through back work calculations, and their working capital is also blocked.

- In many contracts, the mobilization advance is interest-bearing.

- Technically, contractors are borrowing the mobilization advance, which is repayable on demand or will be adjusted against future bill payments. The bank also commits through the bank guarantee, stating that they must pay the amount to the customer/beneficiary on demand. This means there is **no service rendered for the mobilization advance**, and it is considered a liability for the contractor.

- Similarly **Back to Back contracts are affecting in terms of working capital shortfall by paying of GST** on Advances by all parties/contractor/sub-contactors.

**GST on Advance for JOINT VENTURES (JV)**

The concept of this JV is to establish a technical collaboration and get the order. However the operational aspects of the work are managed by the individual partners according to the agreed JV ratio.

In this method, the JV does not have any independent cash flow. If the JV receives a mobilization advance, it is passed on to the JV partners. However, under the current GST Act, GST is being paid twice on the same amount—once when the advance is received by the JV and again when it is distributed to the JV partners.

Additionally, when obtaining the mobilization advance, the JV partners submit bank guarantees from their own companies, not from the JV itself, as the JV normally does not have borrowing capacity.

After the completion of the project, the original GST remitted on the mobilization advance is held by the GST department, and there is no provision to recover this amount unless the GST registration is surrendered. Even in such cases, the JV is facing difficulties in obtaining the refund from the GST department.

**Suggestion:** Due to various practical issues faced by the contractors, **GST may be waived for all kind of advances to contractors based on prober pre-defined instructions to avoid misuse of treating of bill receipts as advances.**

**III.B. NON DEDUCTION OF GST TDS ON JOINT VENTURE ENTITIES**

**Issue:** When joint venture entities act as pass-through entities and are not generating any profit. Deduction of GST TDS and claiming refund are unnecessary time consuming work.

**Suggestion:** Statutory deductions like GST TDS should be waived or allowed to obtain a zero-rated TDS deduction certificate ***in automatic online route*** **like operation of**

**section 395 of the Income Tax Act, 2025 (197 of the Incometax Act, 1961)** which deals with issuance of lower rate of TDS certificates.

## IV. INPUT TAX CREDIT

### IV.A.1. REVERSAL OF ITC FOR NON PAYMENT OF COSIDERATION WITHIN 180 DAYS

### GENERAL INDUSTRIAL ISSUE:

**Present Law:** Second and third provision to Section 16(2)(d) of the CGST Act, 2017 and Rule 37 of CGST Rules, 2017 provides for reversal and re-availment of ITC on account of non payment of consideration to the supplier within 180 days.

Contract works executed for government and its departments are not honouring the contract bills in time but it is taking abnormal delay. The sub contractors are mutually agreeing with the contractors to receive the payment from the contractors according to their actual cash flow based on the payment receipts from the above Government Departments and other contractees. These kind of situations are to be suitably addressed and acted upon.

**Suggestion:** In this hard financial crisis situation, the 180 days norms to be amended. Hence, **this provision is to be suitably modified and make the comforts to the buyers and suppliers to fix the payment terms mutually.**

### IV.A.2. LONG TERM CONTRACTS AND BACK TO BACK CONTRACTS.

**Issue:** In the construction industry, due to the nature of long-term contracts and stage-wise billing, vendor payments often exceed 180 days as per mutually agreed terms.

- It creates unnecessary compliance burden and reconciliation work.
- Temporary reversal and subsequent re-availment of ITC (after payment) leads to artificial mismatch in books.
- No actual revenue loss to the Government, since ITC is availed only after vendor payment in most cases.

- Back to Back contracts are affecting in terms of working capital shortfall by reversing ITC of GST on suppliers payments delay which is against the normal business practice and affecting the ease of doing business.

**Suggestion:** a) To overcome the issue, remove the requirement of ITC reversal for payments not made within 180 days, at least for B2B transactions covered by valid back to back contractors.

b) Alternatively, suitable time arrangement between contractor and contractee should be allowed according to their nature of works and their agreed conditions as per terms of the their original contract agreement executed.

## IV.B. LOSS OF INPUT TAX CREDITS BECAUSE OF NON-COMPLIANCE BY VENDORS AND SUB-CONTRACTORS.

**Issue:** As per section 42 of GST Act 2017, input tax credit availed on provisional basis under section 16 should be matched with GSTR 1 of the vendor. However, if the same is not matching then, the credit availed is required to be reversed with interest by the recipient.

Section 42(3) & 42(5) prescribes that where the input tax credit claimed by a recipient in respect of an invalid supply is in excess of the tax declared by the supplier for the same supply or the outwards supply is not declared by the supplier in his valid return, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient in such manner as may be prescribed in his return for the month succeeding the month in which the discrepancy is communicated.

Notification no.183/15/2022-GST dated 27th December, 2022 and notification no.193/05/2023-GST dated 17th July, 2023 issued in this respect have some practical restrictions for the genuine cases.

In many cases, Suppliers are filing GSTR I returns in time and credit is available in GSTR 2B and GSTR 2A. But they are not properly submitting GSTR 3B. It leads to lot of legal litigation.

**Suggestion:** The provisions of GST Acts to be suitably modified to help the genuine buyers who have paid the suppliers but could not be taken credit due to the failure/ non submission of returns by the suppliers in time. A Liberal view may kindly be considered and suitable notification may be issued to support the dealers to do ease of business.

## IV.C. NEW GST PAYMENT MECHANISAM FOR LONG TERM EPC, HAM. ETC., CONTRACTS IN WHICH GST IS LOCKED FOR THE LONGER PROJECT DURATION.

Infrastructure companies face notices from GST Authority due to reporting methodology followed as per accounting standard. (ie.) for a PPP project, especially ROAD HAM projects which come under continuous services where turnover reported in form GSTR is as per receipt of payment but at the same time as per INDAS accounting standard turnover reported is as per physical progress completion. This difference result in notice issued by GST authority for non payment of GST for the reported turnover in Profit and Loss statement.

ITC reconciliation between main contractors and subcontractors remain a source of litigation. Implement a centralized infrastructure GST ledger or workflow-based offset system, reducing mismatches and disputes. Because for project under Govt departments we follow withheld amount, receipt based payment to subcontractor, which result in ineligibility of GST.

For project under tariff based bidding in electrical department, where GST is non applicable to registered power utility company. But for project owner under PPP for 25 years is covered under GST. This result in 18% addition in capital cost which increase the capital requirement and low IRR of the project.

- Infrastructure companies especially in Long-Term Infrastructure PPP Projects, face huge cost or fund blockage in the form of ITC, which is unutilised or set off in period of 7 to 10 years. This results in huge working capital squeeze. Reform in ITC claim will release huge working capital for the infra companies.
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**Suggestion:** The provisions of GST Acts to be suitably modified to help the genuine buyers to overcome the working capital burden on account of huge amount heldup for a longer durations. A Liberal view may kindly be considered and suitable notification may be issued covering the project period.

## IV.D. GST ON CORPORATE GUARANTEES

GST for Corporate Guarantees, presently as per instructions, GST need to be paid for tenure of the Project loan on considering deemed services at 1% of the corporate guarantee every year for the total tenure of the loan from the date of execution. This GST amount workout to be 5% (approximate) of the project cost when the tenure of the loan is for longer duration (19 years) when company execute solar project where GST is exempted on sale of power, this GST liability stand as a major cost on the project.

**Suggestion:** The provisions of GST Acts to be suitably modified to help the genuine buyers to overcome the working capital burden on account of huge amount heldup for a longer durations. A Liberal view may kindly be considered and suitable notification may be issued.

## IV.E. ISSUES RELATING TO FAKE INVOICES AND ITS IMPACT ON CONSTRUCTION INDUSTRY AND PRECAUTIONS/DUE DILIGENCE PRACTICE TO BE ADOPTED BY CONTRACTORS

**Issue:** Unearthing scam of fake invoices: ITC availed by the genuine buyers against the invoices issued by the concerns which are related to this fake invoices cases are directly being targeted without even hearing their genuine grounds, arguments and material aspects of the case.

**Suggestion: The draconian provisions like arrest are the need of the hour and similarly it should also be used in a very rare and concrete circumstance and not just based on the statement of the one side.** In these situations a proper Standard Operating Procedure (SOP) in consultation of industry people should be designed by CBIC to tackle these cases and provisions like arrest must be used as per the **SOP prescribed**. It is also requested for sufficient Opportunity of being heard for Blocking of Input Tax Credit on account of alleged fake ITC.

## IV.F. ALLOWING ITC FOR IMMOVABLE PROPERTY ON OWN ACCOUNT

**Present Law:** Input Tax Credit (ITC) is the core concept of GST as GST is destination based tax. No ITC is available for goods/services for construction of immovable

property on their own account. Even if such goods/services are used in the course of furtherance of business, ITC will not be available (Sec.17(5)(c)).

**Suggestion:** If the Government allows ITC for the above category of building owners, ***the corporate and high net worth concerns having surplus funds will come out with new constructions*** which will give additional cash inflow to the system. It will give benefit to the real contributors to the society. The ITC set off period may be restricted to 3 to 5 years to arrest the extra revenue loss to the exchequer. Though the exchequer may loose small amount of tax revenue, the real contribution to the society will be multifold.

**IV.G. As per section 16 of CGST Act, eligibilty of claming input tax credit tax credit (ITC) for the financial year is fixed in the following year by the month November which is not align with the Annual return due dates. It should be made align with Annual return in Form GSTR 9 and GSTR 9C time line. It will avoid lot of legal ilitigations and ensure better ease of doing business.**

## V.GENERAL

### V.1. REGISTRATION OF WORKS CONTRACT SERVICES – INTERSTATE SUPPLY

**Issue:** Works Contractors, having a principal place of business in one State may undertake execution of works across India in many States. The registration provisions require the works contractor to obtain registration in each such State even though they have no place of business in those States. If the strict interpretation is taken then, mere installation works also attract registration requirement and they may have to take multiple registrations.

**Suggestion:** Kindly issue a clarification that a works contractor based on one registration in one State can execute works contract in any State by way of IGST billing without separately registering in all other States with suitable adjustment of ITC.

### V.2. REGISTRATION OF ADDITIONAL PLACES

**Issue:** As per in Rule 9 of CGST Rules, 2017, time limit is fixed for grant of GST registration. Presently we are struggling up to start transportation of machinaries and preliminary site materials to newly awarded projects in other States until issue of registration by GST official which normally takes around 15 days.

**Suggestion:** If the application with Aadhar Authentication of Authorised Signatory is submitted, possibly from their head office in virtual mode, the provisional registration should be granted and e-Way Bill facilities should be allowed immediately to enables us to start the intial site preparation related works which are essential at the earliest in the newly awarded projects in any State.

## V.3. PRACTICAL IMPOSSIBILITY OF REGISTERING MOVING WORK SITES AS AN ADDITIONAL PLACE OF BUSINESS (APOB):

Section 2(85) of the CGST Act, 2017 defines a "place of business". However, a pipeline trench or a road alignment moving dynamically through open land/villages cannot possess fixed address proofs (e.g., electricity bills, registered lease agreements, property tax receipts) required by the GST portal for adding an Additional Place of Business (APOB).

Double Jeopardy / Detention Risk During Transit: Even when a contractor registers a central base depot or site office as an APOB, goods must be delivered directly to mobile points along the alignment route where work is ongoing. Tax authorities during transit checks routinely issue detention notices/orders under Section 129, citing that the destination address on the E-Way Bill/Invoice differs from the registered APOB address on the GST certificate.

**Inapplicability of Static Premises Rules to Linear Infrastructure Linear projects do not operate like static factories or fixed retail stores. The work front shifts daily or weekly across multiple revenue villages.**

It is legally and practically impossible to execute individual rent agreements or secure utility connections for every kilometer stretch or village through which a pipeline or road passes.

**Suggestion:** To ensure ease of doing business and prevent unnecessary litigation while safeguarding revenue, we humbly request your office to issue a detailed Circular / Administrative Advisory or forward this recommendation to the GST Council for the following relaxations:

## V.4. TAXABILITY OF GST ON ARBITRATION CLAIMS

**Issue:** Arbitration claims passed and received in GST regime on account of work order completely executed in Pre GST regime.

**Suggestion:** More suitable clarity on leviable of GST on the above receipts and exemption to be announced suitably.

## V.5. TAXABILITY OF LIQUIDATED DAMAGES (LD)

**Issue:** Department often demands GST on liquidated damages, though it is a **compensatory recovery**, not a supply.

**Suggestion:** Issue a **definitive clarification** exempting GST on LD, penalty, and recovery for breach of contracts.

## V.6. ANTI PROFITEERING CLAIMS AND SETTLEMENT THEREOF

**Issue:** Anti profiteering claims in the GST regime are still not being settled in matured way. The main reason for the same is ambiguity and lack of clarification from the Department over same. In absence of the methodology to be followed is not synchronized and being implemented on best judgement of concerned person, which should not be there.

**Suggestion:** Suitable guidance for Anti Profiteering claims and settlement thereof may be issued.

## V.7.CLARIFICATION NEEDED FOR OVERSEAS BRANCHES / EXPORT OF SERVICES

**Issue:** Indian construction companies executing overseas government projects face confusion in claiming zero-rated supplies and LUT-based exemption.

**Suggestion:** Issue a circular confirming that foreign branch contracts for overseas governments qualify as exports and eligible for LUT/zero-rated benefits.

## V.8. GST ON RENTED LAND USED FOR CONSTRUCTION

**Issue:** When land is taken on rent or lease from a third party, and the construction company constructs a commercial building thereon for leasing or rental business, GST is paid on the land rent.

However, under the current provisions of Section 17(5)(d) of the CGST Act, ITC on goods and services used for construction of immovable property on one's own account is blocked, even if used in the course or furtherance of business.

This creates ambiguity on whether ITC can be availed when the land is not owned by the company and the constructed building is used for outward taxable supply (commercial renting).

This results in double taxation - GST is paid on land rent and again on rental income, but ITC on construction cost is disallowed, leading to increased project cost and working capital blogage.

**Suggestion:** Clarify that ITC should be allowed when the constructed building is used for outward taxable supply (commercial renting of immovable property).

Explanatory circular or suitable amendment to permit ITC in such genuine business-use cases may be issued where land is taken on lease and the constructed property is used for taxable rental operations.

## V.9. AMENDMENT OF RULE 36(4) WITH SYSTEM MATCHING METHOD

**Issue:** Rule 36(4) has created a chaos in construction industry in respect of matching the ITC each and every month.

**Suggestion:** It should be avoided and eliminated at the earliest to have efficient and best use of human resource instead of just a clerical working on ITC.

A transparent system of matching methodology are to be announced.

## V.10. ADDITIONAL COLUMNS IN FORMS TO BE ALLOWED IN GSTIN PORTAL

57th Meeting of the GST council recommends return related reforms.

It is suggested a separate columns to be provided in Form GSTR 1, Form GSTR 3B, etc. to include the transactions relating to earlier years in the returns of subsequent year. If these kind of relevant informations reporting of transactions are allowed as per the provisions of the GST Acts, it will make ease of submission during the scrutiny and review of Annual accounts by the authorities and avoid unwanted reconciliation of differences in turnover and tax figures in two different years.

## V.11. Reimbursement of upward revised rates of Tax (Goods and Services Tax) from 12% to 18% on Works Contract Services provided to Central Government, State Government, Union Territory and Local Authority

This is in reference to the impact of implementation of recommendations for GST rate change relating to works contract services in 47th Council meeting held on 28th and 29th June, 2022 at Chandigarh effective from 18-07-2022.

The following are the increase in the GST rates due amendments.

| NOTIFICATION NO. | SUPPLY TO | EFFECTIVE FROM | FROM | TO |
|---|---|---|---|---|
| 15/2021- Central tax (Rate) dated 18th November, 2021 | Governmental Authority, Government Entity | 01st January, 2022 | 12% | 18% |
| 16/2021- Central tax (Rate) dated 18th November, 2021 | Governmental Authority, Government Entity | 01st January, 2022 | 5% | 12% |
| 03/2022 - Central tax (Rate) dated 13th July, 2022 | Central Government, State Government, Union Territory and a local authority | 18th July, 2022 | 5%/ 12% | 12%/ 18% |

The increased rate of GST is attracted for the following nature of works due to amendments mentioned:

| S.No | Description | From | To |
|---|---|---|---|
| 1 | Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium, etc. | 12% | 18% |
| 2 | Works contract supplied to Central and State governments, local authorities, for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contract thereof. | 12% | 18% |

| | | | |
|---|---|---|---|
| 3 | Works contract supplied to Central and State governments, union territories & local authorities involving predominantly earthwork and sub-contract thereof. | 5% | 12% |

- After implementation of such a longer period few of the departments are not released the revised GST rate amount.

- Kindly instruct all the departments to implement the revision in all the agreements suitably and reimburse the revised rate of tax already paid by the contractors to comply the provisions of the GST Acts who are making the timely payment of GST.

- **The Ministry is requested to issue a clarification overriding all the contracts, that any increase in rates of tax will be duly passed on to the contractor by the client** irrespective of the clause in agreement and if required a supplementary agreement should be entered into.

## V.12. BUDGET ALLOCATION Vs TIME OF DISPOSAL OF FUNDS

The construction sector translates public capital expenditure into various infrastructure projects of the Government. However, delayed certified payments, restricted access to working capital. And few other factors increase completion risks and costs. BAI requests a shift from allocating fund and Sovereignty guarantees to be given to only those governments and its departments who follow strict Financial discipline. Who has proper budget provision for all they plan to do. Funda alone can be ensuring timely execution and completion.

## VI. BUILDERS AND DEVELOPERS ISSUES

**A) Issue:** As per Integrated Textile Park Scheme of Ministry of Textiles the building is constructed by the Developer from the contribution of the members. There should be no GST on such construction activity as it is as per within framework of Textile Park Scheme but due to unclarity entrepreneurs are discouraged for new investment.

**Suggestion:** Clarification/ exemption may kindly be issued that there is no GST on such construction activity as it is within framework of Textile Park Scheme.

**B) Issue:** Due to Mudra Loan, Start up India, Standup India schemes many young and women are becoming entrepreneur but are not having enough resources to purchase Commercial space, they prefer to take on lease. The rate of GST on lease is 18%.

**Suggestion:** For the building let out by the builder to the entrepreneurs, the rate of GST should be exempted or at special rate and it should be for a minimum period of Five years.

**C) Deemed valuation of land:**

**Issue:** The reduced rate of 1% without input credit on construction of Affordable housing and 5% on construction of other than Affordable housing is the effective rate after considering 33% deemed deduction for the value of the land.

This one third deemed deduction on account of transfer of Land or Undivided Share of land is irrespective of the actual value of the land transferred. However, the said deemed deduction is not available when there is no transfer of land or undivided share of land.

The critical issue here is that in Metros, the value of the land exceeds the cost of construction. In such a scenario, only 1/3rd deemed deduction is not justified.

**Suggestion:** This provision requires amendment and the additional option to adopt for actual transfer value of land is to be allowed instead of 1/3rd deemed deduction.

**D) Credit note within 6 months from end of Financial Year**

Under GST regime, the taxpayer can adjust his tax liability if he declares the details of Credit Note in the Return filed latest by the month of September Return following the end of the Financial Year in which such supply was made, or the date of furnishing of the relevant Annual Return, whichever is earlier.

However, in Real Estate sector, construction service is a 'continuous supply of service' requiring 3 to 5 years for completion. Significantly, due to this stipulation of time limit of September Return, Developers' get only six months after end of the Year to issue Credit Notes. The aforesaid provision remains a practical and unworkable challenge for Builders / Developers to avail the benefit of reduction of tax liability on account of Credit Note issued after 6 months from the end of Financial Year.

In view of the above, the GST paid on flat(s) cancelled is either required to be borne by the Developer or the Buyer. Hence the time period stipulated needs to be liberalized

/extended considering the peculiar nature of this Industry / Sector.

E) Developer transfers certain percentage of developed area to Land owner as a consideration against transfer of Development Rights. Developer is required to discharge tax at applicable rate i.e. either at effective rate of 1% (Affordable housing), 5% (Residential) or 12% (Commercial), depending upon the nature of the premises so transferred. However, tax is required to be discharged on total amount charged to Independent buyers for similar premises which is nearest to the date of transfer of TDR / FSI, after deduction of value of land i.e. 1/3rd of total consideration.

F) The value of construction service provided by developer to the land owner should be either equal to the value of land or the construction cost incurred. Also, the value for individual flats to the buyer may not be compared with value of flats given in bulk to the land owner.

G) In the case of a JDA, the Developer's role is like a Works Contractor for the land owner and hence, GST, if any shall be leviable only on the cost of construction and not on the total amount charged to Independent buyers for similar premises which are nearest to the date of transfer. The provision in the GST Act is required to be amended.

H) In case of Residential premises, due to liability on unsold premises after the cut-off date, it is imposing additional cost burden on the Developer, which is difficult to foresee at the time of commencement of construction. Further, no clarity has been provided as to whether the Developer is required to consider all unsold flats in a Project, (including those which have been transferred to Land owner) or only those unsold flats which belong to him. Though, logically Developer should be liable to pay Tax only on those unsold flats which remained unsold with him. This requires clarification from the Government to avoid possible future litigation.

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