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## Article

# Tax Incentives for Affordable Housing: An Analysis

By **Tanmay Bhatnagar**

In her Budget speech, the Finance Minister spoke about the Government's goal of achieving the objective of "Housing for All" by 2022. In pursuance of the same, the Government had launched two schemes in 2015 - the Pradhan Mantri Awas Yojna – Gramin (PMAY-G) and the Pradhan Mantri Awas Yojna – Urban (PMAY-U). Under the said schemes the Government aims to construct affordable houses which have been provided with amenities such as toilets, water supply, electricity and LPG connections.

In order to further the objective of "Housing for All", amendments have been proposed to the Income-tax Act, 1961 (hereinafter 'the Act'), namely, the amendment of Section 80-IBA and the insertion of Section 80EEA.

Section 80-IBA of the Act provides for the deduction of one hundred percent of the profits and gains earned by assessees engaged in the business of developing and building housing projects from their total income. Amendment has been proposed to the same in order to align the definition of 'afforable housing' under the Act with that provided in the GST laws. The modified conditions which must be satisfied by a housing projects that are approved on or after 1st September 2019, are as follows:

(i) The stamp duty value of a residential unit in housing project cannot exceed Rs. 45 lakhs.

(ii) The carpet area of a residential unit should not exceed 60 sq.mtr. for projects located in metropolitan cities and 90 sq.mtr. for projects located anywhere else.

The insertion of section 80EEA of the Act aims to provide a deduction to individual-assessees in respect of the interest on loan taken from any financial institution for the acquisition of residential house property. The proposed deduction would be available to assessees, who are not eligible to claim deduction under Section 80EE, from AY 2020-21 and whereby they would be able to claim deduction on the said interest up to the upper limit of Rs. 1.5 lakhs.

To be eligible for such deduction, the following conditions would have to be satisfied:

(i) the loan must have been sanctioned between 1st April 2019 and 31st March 2020;

(ii) the stamp duty value of the residential house property should not be more than Rs. 45 lakhs; and

(iii) the individual-assessee should not own any other residential property on the date of sanction of the loan.

If a deduction with respect to interest is claimed under this section, no further deduction can be claimed for such interest payment under any other provision of the Act for the same or any other assessment year.

A question which may arise while claiming the deduction under this section is whether the 'stamp duty value' of the residential house property would be the transaction value as set out in the instrument of transfer or if it would be the circle rate as notified by the government.

As per the provisions of Section 80EEA, the 'stamp duty value' is the value which is adopted

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by any authority or Government for the purpose of payment of stamp duty in respect of an immovable property. For the purpose of the computation of the stamp duty payable, usually the assessable value of the property is taken as the actual consideration paid or the circle rate for that property, whichever is higher. Thus, even for the purposes of claiming deduction under section 80EEA of the Act, both the actual consideration paid as well as the circle rate of the residential house property should be lesser than Rs. 45 lakhs.

One interesting question would arise if two persons, say A and B, jointly acquire a property, the stamp duty value of which is say Rs. 60 lakhs. In such a set of facts, neither A nor B would be able to claim deduction under section 80EEA of the Act, even though the value of their individual shares in the property could be less than Rs.45 lakhs. It is because the section itself clearly lays down that the stamp duty value of the property cannot exceed Rs. 45 lakhs. Thus, the requirement regarding the valuation is *qua* the property and not qua the owner.

The same is also in consonance with the proposed amendment to section 80-IBA of the Act since therein also it has been laid down that the stamp duty value of a residential unit cannot exceed Rs. 45 lakhs.

Another pertinent question which arises from the perusal of Section 80EEA of the Act is whether the deduction may be claimed by assessees who jointly acquire the residential house property. Thus, in a situation where two individuals A and B jointly acquire house property, the question would be whether both A and B would be eligible to claim deduction of Rs. 1.5 lakhs each.

Another variation of the above situation which may arise is where a residential house property is registered in the names of both A and B, and all the conditions laid down in Section 80EEA are fulfilled. There, the questions which would arise are whether both A and B would be allowed the deduction under Section 80EEA, and if allowed what would be the quantum of such deduction.

A possible interpretation which may be applied to this set of facts is the one laid down by the Bombay High Court while adjudicating upon the deduction under Section 24 of the Act in case of joint ownership of property in *CIT v. Abdullabhai M. Moonim*[1]. Section 24 provides that deduction from income from house property may be claimed on interest payments made with respect to loans taken *inter-alia* for acquisition of property. As per the said decision, deduction on the interest under Section 24 may be claimed by co-owners against their individual shares of the gross income from the property.

Therefore, by applying the said ratio laid down in the context of Section 24, it can be said that both A and B would be able to claim a deduction of Rs. 1.5 lakhs each under Section 80EEA of the Act.

Therefore, it would appear that the benefit intended to be provided by Section 80EEA of the Act with respect to affordable housing would be available even to joint owners of residential house properties. It remains to be seen if such view is also taken by the Department while allowing deduction under this section.

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[1] [1981] 132 ITR 642 (Bombay)

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# Budget 2019 – Changes in Income Tax law

**Lower corporate tax rate - Threshold raised:** The benefit of lower corporate tax rate of 25% has been extended to companies having a turnover of Rs. 400 crores. The threshold has been raised from the existing limit of Rs. 250 croes. Companies having a turnover or gross receipts upto Rs. 400 crores in financial year 2017-18 will be entitled for the benefit for income earned in F.Y. 2019-20. There is no change in the rate of surcharge and Health and Education Cess.

**New categories of persons required to file return of income:** The existing provisions of Section 139 require all persons (other than a company or a firm) to file return of income only if the total income exceeds the maximum amount not chargeable to tax. Few carve-outs to this have been provided in the provisos to the said section. It is now proposed that the following categories of persons will also be required to file return of income from AY 2020-21, notwithstanding that the total income is less than the maximum amount not chargeable to tax:

- any person who has deposited, in total, a sum exceeding Rs. 1 crore in one or more current accounts maintained with a banking company or cooperative bank.
- any person who has, in total, incurred any expenditure more than Rs. 2 lacs for himself or any other person for travel to a foreign country.
- any person, who has, in total, incurred an expenditure more than Rs.1 lakhs, for consumption of electricity.
- any person who fulfils such conditions as may be prescribed.
- a person whose total income exceeds the maximum amount not chargeable to tax, before giving effect to benefit under Section 54, 54D, 54EC, 54F, 54G, 54GA or 54GB.

**Requirement to obtain PAN in certain cases and inter-operability of Aadhar and PAN:** It is proposed that assessees who intend to enter into specified (which will be prescribed) high value transactions will be mandatorily required to obtain a PAN.

Interchangeability between PAN and Aadhaar has been proposed, in that, a person who is required to furnish or intimate or quote his PAN, may alternatively furnish, intimate or quote his Aadhaar. Further, an additional requirement on the persons required to quote PAN or Aadhaar, to also get such PAN or Aadhaar authenticated by prescribed authority is also proposed. Obligation is also proposed to be cast on the person receiving the documents to ensure that such authentication is duly completed. Penal provisions for non-compliance have been proposed in Section 292B of the Act. These amendments are proposed to be effective 1st September, 2019.

**Listed shares also brought within the ambit of tax on buy back:** Tax on buy-back of shares as provided in Section 115QA of Income Tax Act has been extended to shares listed on recognized stock exchange. Corresponding amendment has been made to Section 10 of the Act to exempt capital gains earned by the shareholders holding listed shares on which tax under Section 115QA has been paid by the company. The proposed amendment will be applicable in respect of listed shares bought back on or after 05th July 2019.

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**Tax incentive for purchase of electric vehicles:** New Section 80EEB is proposed to be inserted to provide an additional deduction from the total income of individual-assesses, in respect of the interest on loan taken from any financial institution for the purchase of an electric vehicle. The proposed deduction would be available from Assessment Year 2020-21 and would be capped at Rs. 1.5 lakhs. In order to be eligible for such deduction, the loan must have been sanctioned between 1st April 2019 and 31st March 2023. If a deduction with respect to interest is claimed under this section, no further deduction may be claimed for such interest under any other provision of the Act for the same or any other assessment year.

**Rationalization of provision relating to prosecution on failure to file return of income:** Provisions of Section 276CC of Income Tax Act seeks to prosecute a person for willfully failing to furnish a return of income. The provisions currently provide that a taxpayer (other than a company) who has failed to furnish return of income will not be proceeded against if its tax payable on regular assessment, as reduced by the advance tax and tax deducted at source does not exceed three thousand rupees. The provisions are proposed to be amended to provide that the benefit will be extended in cases where the tax payable on regular assessment, as reduced by the advance tax or self-assessment tax paid before the expiry of assessment year and tax deducted or collected at source does not exceed ten thousand rupees. The proposed amendment will apply with effect from 01st April 2020.

**Cancellation of registration of trusts:** Amendment has been proposed to Section 12AA of the Act, whereby an additional condition must be satisfied in order for a trust or an institution to be registered under 12AA and avail exemption under Sections 11 and 12 of the Act. The authority granting the registration under Section 12AA must now also satisfy itself about the compliance by the trust or the institution of the requirements provided in any other law which is material for achieving its objects. The concerned authority may cancel the registration under Section 12AA if as result of an order, decree or direction (which has either attained finality or has not been disputed), it is found that the trust or the institution has not complied with the requirements laid down in any other law which is material for achieving its objects.

**Gift to non-resident deemed to be income arising in India:** As per proposed clause (viii) to Section 9(1) of the Act, any sum of money paid or property transferred by a resident to a non-resident would be deemed to be income accruing or arising in India. It would be of the nature of income as per Section 56(2)(x). The section applies to all such transactions effected on or after 5-7-2019.

**Exemption to interest on rupee denominated bonds arising to non-resident:** Clause 4B to Section 10 is proposed to be inserted in terms of which interest paid to a non-resident on Rupee Denominated Bonds, not to be treated as income in the hands of such non-resident. This provision applies to borrowings made during the period 17th September, 2018 to 31st March, 2019. No withholding tax provisions to apply on such payments.

**Tax neutral demergers:** For demerger to be tax neutral, Section 2(19AAA) requires all assets and liabilities of the undertaking to be transferred at book values of the transferor company

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(demerged company). Now a relaxation is proposed to the effect that the transferee/ resultant company can record the assets and liabilities as per the provisions of Indian Accounting Standards. Such values may be different from the value as it would have been appearing in the books of accounts of the transferor/ demerged company.

## New TDS obligations on individuals paying to contractors and on cash withdrawals and 'consideration' defined for purpose of Section 194-IA

- ***Section 194-IA:*** 1% TDS on consideration paid for purchase of immovable property. Now it is proposed to clarify that such consideration shall include all charges, which are incidental to transfer of immovable property. Club membership fee, car parking fee, electricity and water fee, maintenance fee, etc. are now sought to be covered.
- ***Section 194M:*** A new section seeks to apply TDS to payments made by individuals and HUFs to a resident for either carrying out a 'work' or for providing 'professional services' in excess of Rs. 50 lakhs in a year. TDS rate will be 5%. There will be no need to obtain TAN and TDS can be deposited by using PAN.
- ***Section 194N:*** A new section 194N has been proposed to apply TDS @ 2% on cash withdrawals in excess of Rs.1 Crore in a year from any bank account. The withholding shall take place on such amount as is in excess of Rs. 1 crore. All banks, including cooperative banks and post offices are liable to deduct tax under this provision. Such TDS will be available as set-off to the assessee against their income tax liability.

**Extension of relief in case of non-deduction of tax on payments to non-residents:** Section 201 treats a person (payer) as an assessee-in-default where taxes are not withheld. Such relaxation was till now expressly provided only for resident payees. This section is proposed to be amended to state that the payer will not be treated as an assessee-in-default if the non-resident payee has paid taxes by declaring such income in its return of income.

## Start-up incentives:

***Carry forward of losses (Section 79):*** Eligible start-ups (as referred to in Section 80-IAC) can now claim carry forward and set off of losses if either of the following (A) No change of control occurs i.e. shareholders beneficially holding 51% or more of the shares prior to change of shareholding continue to beneficially hold shares after change of shareholding occurs; OR (B) All shareholders who held voting rights shares before change of shareholding occurs continue to hold voting shares after the change of shareholding. Prior to the proposed amendment, eligible start-ups could claim carry forward and set off of losses only if condition B was satisfied.

***Exemption from angel tax provisions extended to VC undertakings raising funds from Category II AIFs:*** Consideration for shares received from venture capital undertakings raising funds from Category II AIFs (Alternative Investment Funds registered with SEBI) will also be exempt from operation of Section 56(2)(viib).

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# Ratio Decidendi

## Amendment to Explanation to Section 73 is prospective in nature

The Assessee is a non-banking financial company registered under the Reserve Bank of India Act, 1934. In the assessment under Section 143(3) of the Income Tax Act, the AO held that since the principal business activity of the assessee is trading in shares and securities, the loss from share trading would be treated as "speculative loss" under Explanation to Section 73 of the Act. The assessee submitted that the provisions of Explanation to Section 73 as amended by Finance (No. 2) Act, 2014 w.e.f. 01 April 2015 whereby loss arising from the principal business of trading in shares was amended to be "non-speculative", is retrospective in nature. The Hon'ble Supreme Court rejected the contention and held that the amendment by Finance (No. 2) Act, 2014 to the Explanation to Section 73 is prospective in nature. [*Snowtex Investment Limited* v. *PCIT* - Civil Appeal No. 4483 of 2019, dated 30-4-2019, Supreme Court]

## Non-deposit of tax deducted at source - Initiation of prosecution is not dependent or controlled by Section 201(1A) or Section 221

A survey was conducted at the premises of the Assessee wherein it was found that it had deducted tax at source but failed to remit the same to credit of the Central Government. Pursuant to such survey and thereafter issuance of show-cause notices from the Income-tax Department, the Assessee admitted the default of non-payment of tax deducted at source within the due dates and thereafter, deposited the tax deducted at source. The Commissioner of Income-tax (TDS) then ordered to prosecute the accused under Section 276B read with Section 278B of the Act. Before the High Court, the accused submitted that prosecution cannot be launched on the ground, *firstly*, the liability of the accused was not determined under Section 201(1A) in adjudication proceedings as well as levy of penalty was also not quantified. *Secondly*, the TDS was deposited with interest within a period of 12 months from the date of deduction in accordance with the circular/instruction issued by the CBDT bearing F. No. 285/90/2008-IT(Inv.)/05, dated 24.04.2008. The High Court of Karnataka, rejecting all the contentions raised by the accused, held that where tax has been deducted but not deposited within the prescribed time, the rigours of Section 276B of the Act would be attracted. In case of non-payment of tax deducted at source, accused may invite penal consequences following adjudication, or it may also lead to prosecution. But in any case, initiation of prosecution is not dependent or controlled by Section 201(1A) or Section 221. Further, no circular/instruction was brought on record to show that tax deducted at source was deposited within extended time. [*Golden Gate Properties Ltd. & Ors.* v. *DCIT (TDS)* - Criminal Petition No. 868/2014, dated 26-4-2019, Karnataka High Court]

## Credit for taxes paid to Federal & State government of USA would be available u/s. 91 - Resident but not Ordinary Resident would be eligible for benefit u/s. 91

The assessee, a Resident but Not Ordinarily Resident ('RNOR'), had earned income in the USA while he had also stayed in India for a period of 224 days. He filed the return in USA

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and paid federal taxes as well as state tax in New York. In the return of income filed in India, the assessee claimed credit of the "Federal Income tax" as well as the "State tax of New York". The AO disallowed the credit for "State tax of New York" on the ground that these taxes are not covered by the provisions of Double Taxation Avoidance Agreement entered into between India & USA ('DTAA'). The AO also disallowed the claim of state taxes under Section 91 of the Act on the ground that since there exists a DTAA, provisions of Section 91 of the Act would not be applicable. On first appeal, the CIT(A) confirmed the findings of the AO. On Second Appeal, the Hon'ble Tribunal held that *firstly,* Section 91 of the Act grants credit in respect of taxes paid to Federal as well as State, however, under the provisions of DTAA, tax credit is allowed only of taxes paid to federal and not to state. Since provisions of S. 91 of the Act are more beneficial to the assessee vis-à-vis the tax credit provisions in the DTAA, the assessee would be eligible to claim credit for taxes paid to Federal as well as State. *Secondly,* benefit conferred under Section 91 of the Act would be available to RNOR on the ground that this category of persons also falls within the larger category of "resident" who are entitled to benefit under Section 91(1) & 91(2). [*Aditya Khanna* v. *ITO (International Taxation)* - ITA No. 6668/Del/2015, dated 17-5-2019, ITAT]

## Section 72A read with Rule 9C(a) cannot be invoked before end of 4 years from date of amalgamation

In terms of Sections 391 to 394 of the Companies Act, 1956 a scheme of amalgamation between assessee and amalgamating company was approved by the High Court of Bombay and accordingly, brought forward business losses and unabsorbed depreciation of amalgamating company vested with and into the assessee. During the A.Y. 2009-10 (1st year post amalgamation) & 2010-11 (2nd year post amalgamation), the Assessee had claimed set off of brought forward business losses of the amalgamating company. During the assessment of A.Y. 2010-11, the AO denied the set-off of such brought forward business loss on the ground that the assessee has failed to comply with the condition prescribed under Section 72A read with Rule 9C(a) i.e. of achieving the 50% level of production of the installed capacity of the amalgamating company. On first appeal, the CIT(A) confirmed the action of the AO. On second appeal, the Hon'ble ITAT reversed the action of the AO and held that the conditions prescribed under Section 72A read with Rule 9C(a) have to be seen at the end of four year from the date of amalgamation and in case of non-fulfilment of the same, the set off of accumulated losses and unabsorbed depreciation, already claimed, shall be chargeable to tax as income of the fourth year. Thus, the AO was not correct in denying the set-off in second year from the date of amalgamation. [*Embio Limited.* v. *ACIT, Mumbai* - ITA No. 2629/Mum/2015, Mum.-Trib.]

## Intimation under Section 143(1) is an order for purposes of revision under Section 264

The assessee had paid tax at 20% instead of 10% which was applicable to it in terms of the India-Sweden DTAA and filed the income tax return. This was accepted by the department and intimation under section 143(1) was received by the assesee. Later, the assessee sought to revise the return and filed a revision petition under Section 264 of the Income Tax Act, 1961. However, the Commissioner rejected the petition

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holding that petition was not maintainable and intimation under Section 143(1) was not an order. However, the High Court held that the revision petition seeking rectification of the return accepted by the Department in respect of which intimation is sent under Section 143(1) of the Act is maintainable. The High Court also stated that for the purpose of Section 147/148 (reopening) it may have a different connotation but in the instant case where the order /intimation is prejudicial to the interest of the assessee, the revision petition was maintainable. [*Epcos Electronics Components* v. *Union of India* - [2019] 107 taxmann.com 227(Delhi)]

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