# Impact of Finance Bill 2013 on Real Estate Sector

**The Finance Bill 2013 has effected amendments in Income tax law with respect to 'urbanisation of areas for income tax purposes,' 'value of consideration in case immovable property held as stock in trade is sold below stamp value,' 'taxation of transfer of immovable property for inadequate consideration,' 'TDS on Transfer of immovable property other than agricultural land,' and 'interest on housing loan'. Most of the amendments in the Income-tax Act, 1961, with respect to the real estate transactions, are in a way inevitable and need of the hour. However, considering the current state of inflation, the assessees being 'aam admi', were expecting more relief measures.**

**CA. G. Sekar**

(The author is a member of the Institute. He can be reached at sekarg.gurukripa@gmail.com)

## 1. Urbanisation of Areas for Income Tax Purposes

1.1 The Finance Act 1970, originally amended Section 2(14) of the Income-tax Act, 1961 to classify Agricultural Land as Rural Agricultural Land and Urban Agricultural Land. In 1974, Notification No. 10 of 1994 was issued, classifying lands as Urban Agricultural Land, and the same was separately specified for each State and Municipality. Since

the time of the above Notification, issued almost two decades back, a lot of urbanisation has taken place, and hence with this as the background, the Central Government has amended the Law in Sections 2(1A)(c) and in Section 2(14)(iii) of the Income-tax Act, 1961, and Section 2(ea) clause (b) Explanation 1 in the Wealth Tax Act, 1957, and has introduced the following provisions for classifying lands as Urban Agricultural Lands –

*"... in any area within the* ***distance, measured aerially,—***

*(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to, in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or*

*(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to, in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or*

*(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to, in item (A) and which has a population of more than ten lakh".*

***Comparison of Existing and Proposed Provisions***

1.2 ***Existing Provisions:*** The existing provisions define the term "Capital Asset" as property of any kind held by an Assessee, whether or not connected with his business or profession. Certain categories of properties including Rural Agricultural Land, have been excluded from this definition. Agricultural land situated in any area within the jurisdiction of a Municipality or Cantonment Board, having population of not less than 10,000 according to last preceding census, or (b) situated in any area within such distance not exceeding 8 kilometers from the local limits of any Municipality or Cantonment Board, as notified by the Central Government having regard to the extent and scope of urbanisation and other relevant factors, are in the nature of Urban Agricultural Land, and hence form part of Capital Asset.

1.3 ***Proposed Amendments:*** In Finance Bill 2013, it is proposed to provide that the land situated in any area within the distance, ***measured aerially (shortest aerial distance),*** (I) not being more than two kilometers from the local limits of any Municipality or Cantonment Board and which has a population of more than ten thousand but not exceeding one lakh; or (II) not being more than six kilometers, from the local limits of any Municipality or Cantonment Board and which has a population of more than one lakh but not exceeding ten lakh; or (III) not being more than eight kilometers, from the local limits of any Municipality or Cantonment Board and which has a population of more than ten lakh, shall be considered as Urban Agricultural Land and hence form part of Capital Asset. It is also to be noted that income from Farm House situated in the above Urban Agricultural Land will not be considered as Agricultural Income, if such land is not assessed to Land Revenue. The above Urban Agricultural Land is also included within the definition of the term "Asset" for the purpose of charging Wealth Tax.

It is also proposed to define the expression "population" to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

1.5 ***Issues:***

(a) Whereas, the proposed amendment provides for a distance measure aerially, there may be questions as to whether a particular Survey Number is covered in the aerial distance, since there is no measure as on date to provide for the aerial distance for a particular Survey Number. The aerial distance measured can provide only region–wise coverage, and does not provide accurate coverage by Survey Number wise, which may give rise to unwanted dispute.

(b) Remotely located lands, which are not connected by any motorable road and not approachable, may still be considered as an Urban Land, if they are situated within the

specified area. Such classification cannot be considered as a valid proposition.

## 2. Value of Consideration in case Immovable Property held as Stock in Trade is sold below Stamp Value

2.1 Section 50C of the Income-tax Act, 1961 as amended by the Finance Act 2002, w.e.f 01-04-2003 provides that where a Capital Asset being a land or building or both, is transferred for a value, less than the value as determined by the Stamp Valuation Authority, then the value determined by the Stamp Valuation Authority shall be considered for the purpose of computation of Capital Gains.

2.2 In the following judicial rulings, it has been held that provisions of Section 50C ***shall not apply for Immovable Property held as stock in trade–***

- *KR Palanisamy vs. UOI 2009 180 Taxman 253 (Mad.)*
- *CIT vs. Kan Construction and Colonisers Private Ltd. 2012 208 Taxman 478 (All.)*

2.3 Finance Bill, 2013 proposes to insert a new Section 43CA as follows –

*"...43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.*

*(2) The provisions of sub-section (2) and sub-section (3) of Section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).*

**The Bill proposes that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the Stamp Duty Value, the value so adopted or assessed or assessable, shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and Gains of Business of Profession".**

*(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.*

*(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset".*

2.4 The Bill proposes that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the Stamp Duty Value, the value so adopted or assessed or assessable, shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and Gains of Business of Profession".

2.5 The bill also provides that, where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the Stamp Duty Value may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer. However, this exception shall apply only in those cases where amount of consideration or a part thereof for the transfer has been received by any mode other than cash on or before the date of the agreement.

2.6 ***Issues:***

*(a)* The section provides that "consideration for the property, has been made in ***"any mode other than cash",*** on or before the date of agreement, fixing the amount of consideration for the transfer of such Property". The question arises as to whether the word ***"any mode other than cash"*** will include (a) Transfer by Book Entry or (b) Transfer by way of agreement to exchange or (c) Transfer for Hundi, or Promissory Note executed for the amount of consideration.

*(b)* If an agricultural land, which is not a capital asset, is acquired and held as Stock in Trade, sale of such land may also be brought to tax under the above provision, even if it is used by the assesee for agricultural purpose, since the section starts with the words, ***"An asset other than a Capital Asset".***

## 3 Double Taxation of Transfer of Immovable Property for Inadequate Consideration

3.1 The following new clause (b) is proposed to be substituted in Section 56(2)(vii), to provide that the following shall be taxable value of gift of immovable property –

*"(b) any immovable property,—*

*(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*

*(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:*

*Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:*

*Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;";*

3.2 ***Background:*** In 2009, amendments were made to Section 56 vide Finance Act, 2009 to provide that where an immovable property is received, for a consideration, which is less than stamp duty value of the property and the difference exceeds ₹ 50,000, the difference between stamp duty value and such consideration shall be taxed as the Income of the recipient. But, the Finance Act 2010, withdrew the above provision of taxability with retrospective effect from 01-10-2009, with the reason that there is a time gap between the booking of the property and the receipt of the property in registration, which results in a taxable differential. Therefore, taxing the receipt of property for inadequate consideration is not a fair proposition. But within three years, there seems to have been a change in the mindset of the Government and the same amendment has been brought back.

**Where the land or building is a Capital Asset, transferred for a value less than the Stamp Duty Value, the notional difference amount is taxable in the hands of the Transferor as Capital Gain under Section 50C, and if the asset is held as Stock in Trade, taxable as profit and gains of business or profession, in the hands of the transferor by the proposed Section 43CA. To tax the notional amount again in the hands of the transferee, leading to Double Taxation and collecting a tax of 50% to 60% in aggregate from the Transferor and the Transferee may not be fair.**

3.3 The Bill proposes to amend the section, to provide that, where any immovable property is received for a consideration which is less than the value fixed by the Stamp Valuation Authority by an amount exceeding ₹ 50,000, the differential value shall be chargeable to tax, in the hands of the individual or HUF as Income from Other Sources.

3.4 The Bill also proposes to provide that, where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration is not the same; the stamp duty value may be taken as on the date of the agreement instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration or part thereof, has been paid by any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable.

3.5 The above amendments will override the following decision of the Delhi High Court in the case of *CIT vs. Khoobsurat Resorts Private Limited 2012 211 Taxmann 510.*

3.6 ***Issues:***

(a) ***Double Taxation:*** Where the land or building is a Capital Asset, transferred for a value less than the Stamp Duty Value, the ***notional difference amount*** is taxable in the hands of the Transferor as Capital Gain under Section 50C, and if the asset is held as Stock in Trade, taxable as profit and gains of business or profession, in the hands of the transferor by the proposed Section 43CA. To tax the notional amount again in the hands of the transferee, leading to Double Taxation and collecting a tax of 50% to 60% in aggregate from the Transferor and the Transferee may not be fair.

(b) The issue highlighted in Para 2.6(a) above will be applicable here as well.

## 4. TDS on Transfer of Immovable Property other than Agricultural Land

4.1 ***Background:*** It is mandatory under Section 139A of the Income-tax Act, 1961 read with Rule 114B of the Income-tax Rules, 1962 to quote the PAN in documents pertaining to purchase or sale of immovable property for value of Rs. 5 lakh or more. However, the information furnished to the Department in Annual Information Returns by the Registrar or Sub-Registrar indicate that a majority of the Purchasers or Sellers of immovable properties, valued at ₹30 lakh or more, during the financial year 2011-12 did not quote or quoted invalid PAN in the documents relating to transfer of the property.

4.2 The existing provisions of the Income-tax Act, 1961 provide for deduction of tax at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc. On transfer of immovable property by a Non Resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a Resident, except in the case of compulsory acquisition of certain immovable properties.

4.3 Hence, a new Section 194–IA is proposed to be introduced as follows –

*'194-IA. (1) Any person, being a transferee, responsible for paying (other than the person referred to in Section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon.*

*(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.*

*Explanation.— For the purposes of this section,—*

*(a) "agricultural land" means agricultural land in India, not being a land situated in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of Section 2;*

*(b) "immovable property" means any land (other than agricultural land) or any building or part of a building.'*

4.4 In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, it is proposed to insert a new Section 194-IA to provide that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property (other than Agricultural Land) to a resident transferor, shall deduct tax,at the rate of 1% of such sum.

4.5 In order to reduce the compliance burden on the small taxpayers, it is further proposed that no

deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than ₹50 lakh.

4.6 The above is a welcome move, because most of the undisclosed income in real estate transactions, will now be brought under the lens of the taxman.

4.7 ***Suggestion:*** Instead of putting every transferee into the difficulty of deducting tax and remitting to Government, following options may be considered by the Government in order to avoid the necessity of tax deduction and subsequent compliance by Transferees –

(a) The Sub-Registrar registering the property may be mandated to collect 1% TCS from the Transferor, and require the transferor to quote his PAN as a precondition for registration of property.

(b) The onus may also be passed on to the transferor, to pay mandatory Advance Tax of 1% of the value of the property transferred, and the same may be required to be produced as an evidence and pre–condition for registration. A separate code and challan may be used for remittance of the same so that the said transactions can be distinctly identified and tracked.

(c) If the Government decides to continue the TDS provisions itself, a specially designed TDS challan may be used, with the details of the PAN of transferor and transferee without any need for the transferee to apply for TAN and submit returns etc., for a single property purchase transaction.

## 5. Interest on Housing Loan

5.1 ***Existing Provisions:*** Presently, income chargeable under the head 'Income from House Property' is computed under Section 24 after making the following deductions –

(a) 30% of the Annual Value,

(b) Where the property has been acquired, constructed, repaired, renewed or reconstructed with Borrowed Capital, the amount of any interest payable on such capital.

5.2 Where the property consists of a house or part of a house which is in the occupation of the owner for the purposes of his own residence or cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, then the amount of deduction as mentioned above shall not exceed ₹1,50,000.

5.3 Keeping in view the need for affordable housing, an additional benefit for first-home buyers is proposed to be provided, by inserting a new Section 80EE in the Income-tax Act, 1961 relating to deduction, in respect of interest on loan taken for residential house property as follows –

*'80EE. (1) In computing the total income of an assessee, being an individual, 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.*

*(2) The deduction under sub-section (1) shall not exceed one lakh rupees and shall be allowed in computing the total income of the individual for the assessment year beginning on the 1st day of April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than one lakh rupees, the balance amount shall be allowed in the assessment year beginning on the 1st day of April, 2015.*

*(3) The deduction under sub-section (1) shall be subject to the following conditions, namely:—*

*(i) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 2013 and ending on the 31st day of March, 2014;*

**The proposed new Section 80EE provides that, the deduction shall apply only for loan taken for the purpose of "acquisition of a residential house property". It is not clear whether the deduction is available in case of self-construction of the property by the assessee. The maximum deduction of ₹1,50,000 for interest on self occupied property was prescribed by Finance Act 2000, w.e.f 01-04-2001. Considering the inflation, in the last decade and increase in the value of residential house, in the market, is would have only been fair on part of the Government to extend this benefit to all assessees having self occupied, property instead of a select few categories of assessees.**

*(ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed ₹25 lakh;*
*(iii) the value of the residential house property does not exceed ₹40 lakh;*
*(iv) the assessee does not own any residential house property on the date of sanction of the loan.*
*(4) Where a deduction under this section is allowed for any interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.*
*(5) For the purposes of this section,—(a) "financial institution" means a banking company to which the Banking Regulation Act, 1949 applies including any bank or banking institution referred to in Section 51 of that Act or a housing finance company;*
*(b) "housing finance company" means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.'*

5.4 The proposed new Section 80EE seeks to provide that in computing the total income of an assessee, being an individual, there shall be deducted, subject to the provisions of Section 80EE, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

5.5 The deduction under the proposed section shall not exceed ₹1,00,000 and shall be allowed in computing the Total Income of the individual for the assessment year beginning on 1st April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than ₹1,00,000, the balance amount shall be allowed in the assessment year beginning on 1st April, 2015.

5.6 It is also provided that the deduction shall be subject to the following conditions –
(a) The loan is sanctioned by the financial institution during the period beginning on 1st April, 2013 and ending on 31st March, 2014;
(b) The amount of loan sanctioned for acquisition of the residential house property does not exceed ₹25 lakh;
(c) the value of the residential house property does not exceed ₹40 lakh;
(d) The assessee does not own any residential house property on the date of sanction of the loan.

5.7 It is also provided that where a deduction under this section is allowed for any assessment year, in respect of interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Income-tax Act, 1961 for the same or any other assessment year.

5.8 ***Issue:*** The Section provides that, the deduction shall apply only for loan taken for the purpose of ***"acquisition of a residential house property".*** It is not clear whether the deduction is available in case of ***self-construction*** of the property by the Assessee.

5.9 ***Selective in nature:*** The maximum deduction of ₹1,50,000 for interest on self-occupied property was prescribed by Finance Act 2000, w.e.f. 01-04-2001. Considering the inflation in the last decade and increase in the value of residential houses in the market, it would have only been fair if this benefit was extended to all assessees having self-occupied property, instead of a select few categories of assessees.

## 6 Conclusion

Most of the above amendments in the Income-tax Act, 1961 with respect to the real estate transactions, are in a way inevitable and need of the hour. However, considering the current state of inflation, the assesses being 'aam admi', were expecting more relief measures (one such example being the fixing of the ceiling for deduction of Interest on House Property at a much higher value.), rather than burdening them with further compliances and subjecting them to double taxation in certain cases.■