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Real Estate Going Global India

Tax and legal aspects of real estate investments around the globe

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Contents

All information used in this content, unless otherwise stated, is up to date as of 14 June 2012.

Real Estate Tax Summary – India

A foreign investor is not permitted to invest directly in an immovable property in India. However, this restriction does not apply to non-resident Indian (NRI), Person of Indian Origin (PIO) and a foreign company acquiring immovable property (through a branch or project office or other place of business in India) for carrying out its business activities. However, a foreign investor can invest in permitted securities of an Indian company undertaking construction and development of real estate projects (subject to certain conditions provided under foreign direct investment policy of India).

Applicable taxes

Under the Indian Income-tax Act, 1961 (the Act), income from immovable property can be characterised either as 'business income' or 'income from house property'. In case the income is characterised as business income, it would be taxable at the rate of 30% (plus applicable surcharge and education cess) after allowing deduction of all legitimate business expenses. In case income is characterised as income from house property, such income would be taxable at the rate of 30% (plus applicable surcharge and education cess) after allowing a standard deduction provided under the Act.
The income computation mechanism under both the above heads of income would be different.

Tax incentives are available for certain projects in the real estate sector.

Capital gains earned on transfer of property taxable as either short term capital gains (if property held for 36 months) or long term capital gains (if held for more than 36 months), taxable at 30% (plus applicable surcharge and education cess) and 20% (plus applicable surcharge and education cess) respectively.

General Anti-Avoidance Rule (GAAR) recently introduced under the Act, can be invoked by Indian income-tax authorities in case the arrangements are found to be impermissible avoidance arrangements. GAAR will come into force from 1 April 2013. However, the guidelines for application of the provisions of GAAR would be prescribed in due course.

Real Estate Investments – India

Regulatory framework

Direct investments in real estate property

An NRI and PIO are permitted to acquire any immovable property in India other than agricultural land, plantation property, or farmhouse property.

A foreign company is not permitted to directly hold any immovable property in India. However, as an exception, a foreign company (through a branch or project office or other place of business in India) is permitted to acquire any immovable property in India, for carrying on its business activities.

Foreign direct investments (FDI) in real estate

Under the FDI route, a person resident outside India is allowed to invest in 'permitted securities'. Permitted securities include equity shares, compulsorily convertible preference shares and compulsorily convertible debentures issued by an Indian company.

FDI, for the purpose of construction and development projects, is permitted only in a company incorporated in India. No other form of entity like Limited Liability Partnerships (LLPs) is permitted to raise FDI for construction and development projects.

Therefore, under the FDI route, a foreign investor can directly invest in permitted securities of an Indian company engaged in construction and development of real estate projects.

As per the extant FDI Policy dated 10 April 2012 (FDI Policy)[1], 100% FDI in construction and development projects is permitted under the automatic route. The investment is subject to certain investment and project-related guidelines as follows:

The minimum area to be developed for each project is:

- in case of development of serviced housing plots – minimum land area of 10 hectares;
- in case of construction-development projects – minimum built-up area of 50,000 square metres;
- In case of a combination project, any of the above two conditions.

[1] FDI Policy, which provides for the regulatory framework for foreign direct investments in India consolidates all prior Press Notes/Press Releases/Circulars on FDI in India including Press Note 2 of 2005 for investment in construction development projects. This FDI Policy supersedes all the Press Notes/Press Releases/Circulars on FDI issued earlier.

Investment would be subject to the following:

- Minimum capitalisation of USD 10m for wholly owned subsidiaries and USD 5m for joint venture (JV) with Indian partners. The funds would have to be brought in within six months of commencement of business.
- The entire investment cannot be repatriated before a period of three years from completion of minimum capitalisation. The lock-in period of three years will be applied from the date of receipt of each instalment/tranche of FDI. The investor may exit earlier with prior Foreign Investment Promotion Board (FIPB) approval.

At least 50% of each project is required to be developed within five years from the date of obtaining all statutory clearances. The investor/investee company is not permitted to sell undeveloped plots.

FDI is permitted without the above conditionality's in special economic zones (SEZs), hotels and tourism, hospitals, education sector and old age homes under the automatic route.

FDI is also allowed up to 100% in industrial parks under the automatic route. The conditions specified above would not apply provided the industrial park meets the prescribed conditions in terms of minimum number of units, specified industrial use, etc. There is no minimum area requirement.

However, FDI is prohibited in an Indian company engaged in trading in land, property or transferable development rights.

Regarding the FDI policy, the government has provided guidelines for:

- calculation of total foreign investment – i.e. direct and indirect foreign investment in Indian companies;
- transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities;
- downstream investments by Indian companies (which have FDI).

External commercial borrowings

Under the existing External Commercial Borrowing (ECB) policy of the Government of India Indian companies (other than financial intermediaries) are allowed to raise ECBs from any internationally recognised source such as banks, financial institutions, capital markets, export credit agencies, suppliers of equipment, foreign collaborators and foreign equity holders (holding the prescribed minimum level of equity in the Indian borrower company).

The prevailing ECB policy stipulates certain end-uses, e.g. ECBs can be availed only for import of capital goods, new projects, modernization and expansion of projects in the real sector – industrial sector and infrastructure sector – in India. Utilization of ECB proceeds is not permitted for real estate, working capital, general corporate purposes and repayment of existing loans. However, ECB is permitted for infrastructure projects including development of industrial parks and urban infrastructure projects (water supply, sanitation and sewage projects).

SEZ developers are allowed to avail ECB for providing infrastructure facilities within the SEZ under the approval route. However, ECB is not permissible for development of integrated township and commercial real estate within the SEZ.

Till December 2010, corporates engaged in the development of integrated township of size exceeding 100 acres were permitted to avail ECB. With effect from 1 January 2011, development of integrated township has been removed from the permitted end-uses under the ECB guidelines and therefore ECB is not permitted for development of integrated townships. However, low cost affordable housing projects are permitted to avail ECB. The withholding tax on such interest is 5% as compared to 20% (in case of foreign currency loans availed for other projects).

A project shall be an affordable housing project if:

- the project has prior sanction of the competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- the date of commencement of operations of the project is on or after 1 April 2011;
- the project is on a plot of land which has a minimum area of one acre;
- at least thirty per cent, of the total allocable rentable area of the project comprises of affordable housing units of Economically Weaker Section (EWS) category;
- at least 60% of the total allocable rentable area of the project comprises of affordable housing units of EWS and Lower Income Group (LIG) categories;
- at least 90% of the total allocable rentable area of the project comprises of affordable housing units of EWS, LIG and Middle Income Group (MIG) categories;
- the remaining 10% or less of the total allocable rentable area of the project comprises of other residential or commercial units;
- the layout and specifications including design of the project to be developed and built is approved by the State or Union territory Government or its designated implementing agency;
- the project to be completed within a period of five years from the end of the financial year in which the project is sanctioned.

ECBs equal to or less than USD 20m should have a minimum average maturity of three years. ECBs of higher amounts have a five-year minimum average maturity requirement. ‘All-in-cost ceilings’ are as given below:

- Three–five-year maturity – 350 basis points over six-month LIBOR*
- Five years and above maturity – 500 basis points over six-month LIBOR*

*for the respective currency of credit or applicable benchmark.

Convertible instruments

As per clarification[2] issued by the foreign exchange regulators, instruments that are quasi-debts like convertible debentures would be reckoned as part of equity only if in nature these are compulsorily convertible into equity, within a specified time. Hence, foreign investments in the form of compulsorily convertible debentures are considered as equity under the FDI policy.

Similarly, compulsorily convertible preference shares are also considered as ‘equity’ for the purpose of FDI.

The issue price for the securities should be subject to minimum price computed as per discounted cash flow[3] (DCF) method of valuation. The conversion of the convertible instruments into equity shares should be at such minimum price.

Optionally convertible or redeemable preference shares would be considered as ECB and not qualify as equity under the FDI policy, thereby requiring compliance with ECB norms.

Regulations specific to non-resident Indians (NRIs)

An NRI is permitted to acquire any immovable property in India other than agricultural land, plantation property, or farmhouse property. A PIO resident outside India is also permitted to invest in any immovable property, other than agricultural land, plantation property, or farmhouse property, in India from the following sources:

- Funds received in India through normal banking channels by way of inward remittance from any place outside India.

- Funds held in any non-resident account maintained in accordance with the provisions of exchange control laws.

Exchange control laws permit transfer of the above properties, subject to restrictions.

Repatriation of sale proceeds on transfers of immovable property by an NRI/PIO if acquired out of foreign currency shall be permitted, provided certain conditions are satisfied, inter alia, including the following:

The amount to be repatriated does not exceed:

- the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels, or out of funds held in a Foreign Currency Non-Resident (FCNR) account; or

- the foreign currency equivalent, as on the date of payment, of the amount paid where such payment was made from the funds held in a Non-Resident External Account for acquisition of the property.

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[2] A.P. (DIR Series) Circular 74 dated 8 June 2007.

[3] RBI has prescribed the DCF method of valuation for computing the price of instrument at the time of issue, conversion or transfer. The valuation should be supported by a valuation report from an independent chartered accountant.

In the case of residential property, the repatriation of sale proceeds is restricted to the Indian proceeds from not more than two such properties.

NRIs/PIOs are permitted to remit up to USD 1m per financial year on account of sale proceeds of assets (including immovable property) on production of documentary evidence in support of acquisition of assets in India and discharge of appropriate Indian taxes. NRIs/PIOs can freely repatriate rental income from such properties through the banker/authorised dealer.[4]

NRIs are permitted to invest up to 100% in construction development projects without the requirement to comply with the conditions mentioned above under the FDI Policy. Such investment is on repatriable basis. The above investment can also be done by NRIs on a non-repatriable basis.

NRIs are freely allowed to invest in companies listed on Indian stock exchanges, engaged in construction and development of real estate projects, under the Portfolio Investment Scheme (PIS) without any prior FIPB/RBI approval subject to fulfilment of inter alia the following conditions:

- Total paid-up value of shares purchased by an NRI both on repatriation and non-repatriation basis does not exceed 5% of the paid-up value of shares of Indian company.

- The aggregate paid-up value of shares purchased by all NRIs in the Indian company does not exceed 10% of the paid-up value of the Indian company. The ceiling of 10% can be raised to 24% through a special resolution passed by the Indian company.

Real Estate Mutual Funds (REMFs)

The Securities and Exchange Board of India (SEBI) has amended SEBI (Mutual Fund) Regulations, 1996 (vide notification dated 16 April 2008) to permit mutual funds (MFs) to launch REMFs. The salient features of REMFs are:

- REMF means a scheme of a mutual fund, which has the investment objective to invest directly or indirectly in Real Estate Asset.

- ‘Real Estate Asset’ has been defined as an immovable property that is situated in a city notified by SEBI or in an SEZ, on which construction is complete and is usable with clear title and is free from all encumbrances and litigation and freely transferable. There are specific exclusions such as vacant land, agricultural.

- Existing MFs are eligible to launch REMFs if they have adequate number of experienced key people/directors and sponsors should have a minimum five-year experience in the real estate business. Other criteria applicable for sponsoring an MF shall continue to apply.

- The REMFs shall be close-ended schemes and its units shall be listed on a stock exchange with net asset value being declared daily.

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[4] A.P. (Dir Series) Circular No12 dated 16 November 2006.

- At least 35% of the net assets of the scheme will be invested directly in real estate assets. Balance can be invested in specified securities and shares of companies engaged in real estate business. No more than 75% of the net assets of the scheme can be invested in real estate assets, and real estate-related securities (including mortgage-backed securities).

- The REMFs shall appoint a custodian who shall be duly registered with SEBI to keep custody of title deeds of the assets.

- Each real estate asset is required to be valued every 90 days by two valuers, accredited by a credit rating agency registered with SEBI.

- Caps are imposed on investment in a single city, single project, securities issued by sponsor/associate companies, etc.

- Transfer of real estate assets among various schemes of an MF are not allowed.

- REMFs cannot undertake lending or housing finance activities.

The amended regulations also specify accounting and valuation norms related to the scheme.

Real Estate Investment Trust (REIT)

On 28 December 2007 SEBI also issued the draft SEBI (Real Estate Investment Trust) Regulations, 2008 for public comments. The REIT Regulations are still in the draft stage and are yet to be formalised or enacted. No further development has taken place on the REIT Regulations, since the draft regulations were posted for public comments in December 2007. The salient features of REITs are:

- REIT is required to be constituted as a trust.

- REIT and Real Estate Investment Management Company (REIMC) need to be registered with SEBI.

- REIT should have a net worth of INR 50m.

- 50% of the trustees of REIT/directors of REIMC, as the case may be, should be independent.

- Schemes to be floated by REIT need to be ‘close-ended’ and units of every scheme are required to be listed on a stock exchange as specified in the offer document.

- REITs are allowed to invest only in real estate.

- REITs are prohibited from investing in vacant land or engage in property development.

- REITs cannot take more than 15% exposure in a single real estate project.

- REITs cannot take more than 25% exposure of all the real estate projects developed, marketed, owned or financed by a group of companies.

- REIMC has restrictions on undertaking any activity other than that of managing schemes.

- Every scheme is required to appoint an independent property valuer. The scheme is required to disclose NAV annually based on property valuer's report.

Currently, there are no enabling provisions in the Indian exchange control regulations for participation by foreign investors in REITs.

Real Estate (Regulation and Development) Bill, 2011

The Ministry of Housing and Urban Poverty Alleviation unveiled the Real Estate (Regulation and Development) Bill, 2011 (Real Estate Bill) which is currently in the draft stage. The Real Estate Bill proposes to promote transparency and accountability in the real estate sector. Some key highlights of the Real Estate Bill are as follows:

- Establishment of a 'Real Estate Regulatory Authority' in each State by the Appropriate Government with specified functions, powers, and responsibilities to facilitate the orderly and planned growth of the sector;
- Mandatory registration of developers/builders, who intend to develop immovable property, with the Real Estate Regulatory Authority as a system of accreditation;
- Mandatory public disclosure norms for all registered developers, including details of developer, project, land status, statutory approvals and contractual obligations;
- Obligations of promoters to adhere to approved plans and project specifications, and to refund moneys in cases of default;
- Obligation of allottee to make necessary payments and other charges agreed to under the agreement and payment of interest in case of any delay;
- Provision to compulsorily deposit a portion of funds received from the allottees in a separate bank account, to be used for that real estate project only;
- Establishment of a 'Real Estate Appellate Tribunal' by the Central Government to hear appeals from the orders of the Authority and to adjudicate on disputes.

Applicable taxes

The main taxes related to transactions in real estate are summarised in the subsequent paragraphs.

Taxability of rental income

The owner of a 'house property' is subject to tax under the head 'Income from House Property' under the Act at the rate of 30% (plus applicable surcharge and education cess). 'House Property' means property consisting of any buildings or lands appurtenant thereto of which the taxpayer is the owner other than such portions thereof occupied for the purposes of the owners' business or profession.

The following deductions are allowable against rental income characterised under the head 'Income from House Property':

- Municipal taxes actually paid by the owner – assessee (to be deducted while computing annual value as referred above).
- A notional sum towards repairs equal to 30% of the annual value.
- Interest payable on borrowed capital, where the borrowed capital has been used for acquisition, construction, repairs, renewal and reconstruction of the property, subject to a prescribed monetary ceiling.
- Costs that are capital in nature, such as stamp duty and legal costs incurred in relation to the acquisition of property, are not deductible in the computation of taxable income, but form part of the cost of acquisition.
- In case the rental income is characterised as income from business activities, all legitimate business expenditure is allowable as a deduction from business profits and the income would be taxable at the rate of 30% (plus applicable surcharge education cess).

There has been litigation regarding characterisation of rental income as 'Income from House Property' or 'Business Income'. The litigation arises mainly on account of difference in computation mechanism under both these heads.

In August 2010, a Bill to replace the Act, known as the Direct Taxes Code Bill, 2010 (DTC) was introduced before Parliament. The DTC will replace the Act, once it is passed by Parliament.

DTC attempts to settle the above controversy on characterisation of rental income. DTC provides that any income from letting of any house property shall be characterised as 'income from house property' notwithstanding that the letting of the property is in nature of trade, commerce or business. However, income from house property used as a hospital, hotel or property that forms part of an SEZ shall be characterised as 'business income'.

Depreciation allowance under tax laws

Depreciation allowance at rates varying between 5% and 100%, depending upon the type of building, is allowed against business income for buildings used by a person in their own business, and not leased out. If the person is in the business of leasing and the rental income is characterised as business income, then depreciation is allowed for tax purposes.

Generally, the basis of depreciation is the written-down value, or WDV, of the building. Land is not depreciable. If the building is held as private property, no depreciation is allowable. The law prescribes the rates at which depreciation is to be calculated on block of assets (BoA). Under this method, depreciation is not allowed on any individual asset but is calculated on the BoA. On purchase of an asset belonging to a particular BoA, it is added to the BoA at cost. Similarly, the consideration received on sale of asset is reduced from the said BoA. When such consideration received exceeds WDV of the BoA, the negative BoA value is chargeable to tax as income in the year of sale.

Tax holiday

There are various tax incentives available for projects in the real estate sector, some of which include:

- Deduction of whole of capital expenditure allowed to the following specified business, if the operations commence on or after 1 April 2010:
  - Business in the nature of building and operating a hotel of two stars or above.
  - Business in the nature of building and operating a hospital with at least 100 beds for patients.
  - Business in the nature of developing and building a housing project under a scheme of slum redevelopment and rehabilitation.
  - Business in the nature of developing and building a housing project under a scheme of affordable housing.
- From 1 April 2013, deduction of 150% of the capital expenditure would be allowed for the following specified business:
  - Business in the nature of building and operating a hospital with at least 100 beds for patients.
  - Business in the nature of developing and building a housing project under a scheme of affordable housing.
- Homeowners are entitled to a deduction of up to INR 150,000 for interest paid on money borrowed for acquisition or construction of self-occupied property. A further deduction of INR 100,000 can also be availed from the gross taxable income on account of principal repayment of housing loan.

Taxation of REMFs

REMFs are taxed in the same manner as other mutual funds. Accordingly:

- The income of a REMF is exempt from income-tax.
- If the REMF is not regarded as an 'equity oriented' fund, Dividend Distribution Tax (DDT) at 12.5% (plus applicable surcharge and education cess) to individuals/HUF and 30% (plus applicable surcharge and education cess) in case of others is payable on distribution. DDT is not payable by an 'equity oriented fund'. Such dividend income is exempt in the hands of the unitholder.
- Gains on transfer of REMF units on the stock exchange would attract capital gains tax.

Gains on transfer of property

The profit arising on sale of immovable property is taxable depending upon the character of the asset in the hands of the seller, i.e. whether the same is held as a business asset or a capital asset, with the former being taxed at normal corporate tax rates and the latter generally being subject to reduced tax rates. Typically, these would classify as business properties in the hands of a developer.

Profits arising from the transfer of capital assets are categorised as short-term or long-term, depending on the period for which the asset has been held before transfer. Land and buildings held for more than 36 months are considered as long-term assets.

Properties held for a period up to 36 months are considered as short-term assets. Long-term capital gains, i.e. capital gain on transfers of long-term capital assets, are taxed at 20% (plus applicable surcharge and education cess) Short-term capital gains are taxed at 30% (plus applicable surcharge and education cess).

For computation of capital gains, cost of acquisition, costs of improvement and expenditure incurred in connection with the transfer of capital assets are deducted from the full value of consideration received. In computing long-term capital gains on real estates, cost of acquisition and improvement are indexed to mitigate the impact of inflation. Further, under certain circumstances, long-term capital gain is exempt from tax if the consideration or capital gain, as the case may be, is reinvested in prescribed investments.

Loss carryforward

Losses from letting out of one property can be used to offset rental income from other properties in the same year, and thereafter against other types of income, such as business, interest, capital gains, etc., in the same year. Unabsorbed losses of one year can be carried forward for the subsequent eight years and used to offset income from house property in those years.

Short-term capital loss on the transfer of one property can be used to offset gain from the transfer of another property or any other capital assets within the same year. However, long-term capital loss on transfer of one property can be used to offset only long-term capital gain on the transfer of another property or any other capital assets within the same year.

Unabsorbed short-term capital losses can be carried forward for a subsequent eight years and be used to offset capital gain in those years. However, unabsorbed long-term capital losses can be carried forward for a subsequent eight years and be used to offset only long-term capital gain on the transfer of another property or any other capital assets.

General Anti-Avoidance Rule (GAAR)

The Act provides for the General Anti Avoidance Rule which may be invoked by the Indian income-tax authorities in case arrangements are found to be impermissible avoidance arrangements.

A transaction can be declared as an impermissible avoidance arrangement, if the main purpose or one of the main purposes of the arrangement is to obtain a tax benefit and it:

- creates rights or obligations which are ordinarily not created between parties dealing at arm's length;
- results in directly/indirectly misuse or abuse of the Act;
- lacks commercial substance or is deemed to lack commercial substance in whole or in part; or
- is entered into or carried out in a manner, which is not ordinarily employed for bona fide business purposes.

In such cases, the tax authorities are empowered to reallocate the income from such arrangement, or recharacterise or disregard the arrangement. Some of the illustrative powers are:

- disregarding or combining or recharacterising any step of the arrangement or party to the arrangement;
- ignoring the arrangement for the purpose of taxation law;
- relocating place of residence of a party, or location of a transaction or situs of an asset to a place other than provided in the arrangement;
- looking through the arrangement by disregarding any corporate structure; or
- recharacterising equity into debt, capital into revenue, etc.

The guidelines for application of the provisions of GAAR should be prescribed in due course.

Further, the onus to prove, that the main purpose of an arrangement was to obtain any tax benefit is on the income-tax authorities. The tax payer can approach the Authority of Advance Rulings for a ruling to determine whether an arrangement can be regarded as impermissible avoidance arrangement. Also, GAAR will come into force from 1 April 2013.

Direct Taxes Code Bill, 2010

The DTC Bill introduced in August 2010, which would replace the Act, is yet to be enacted. The implementation date of DTC is currently not certain. DTC will become law once it is passed by Parliament. Tax holidays are proposed to be provided under DTC for certain construction development projects.

Investment-linked deductions[5] are proposed to be provided for inter alia the following businesses:

- Business in the nature of building and operating a new two star or above hotel, commencing operations from 1 April 2010.
- Business in the nature of building and operating a new hospital with at least 100 beds for patients, commencing operations from 1 April 2010.
- Business in the nature of developing and building a housing project under a scheme of slum redevelopment and rehabilitation, commencing operations from 1 April 2010.
- Business of developing an SEZ, notified post 31 March 2012.

The tax holidays made available under the Act, on a profit-linked basis, would continue to be available for the balance period of holiday under DTC, subject to certain conditions prescribed under DTC.

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[5] Under investment-linked deductions, operating, financial and capital expenditure is allowed as a deduction against the gross income.

DTC also provides for GAAR.

Guidelines on conditions and manner of applicability of GAAR have not been prescribed under DTC.

Double taxation avoidance agreements (DTAAs) between India and other countries

India has comprehensive DTAAs with over 90 countries. DTA provisions prevail over Indian domestic law if the provisions are more beneficial to the taxpayer. In order to claim the benefit under such DTAAs, from 1 April 2013, it would be necessary for a non-resident to obtain a Tax Residency Certificate (TRC) from the Government of his country in which he is a tax resident which should contain particulars as may be prescribed by the Indian income-tax authorities. The particulars to be included are yet to be prescribed.

Wealth tax

There is a charge of wealth tax on the net wealth as of 31 March each year at 1% on the value by which such net wealth exceeds INR 3m. Net wealth includes assets such as urban land, and other land and building excluding, among others, assets forming part of stock-in-trade of an assessee, let-out property and commercial establishments or complexes.

Other taxes/levies

Stamp duty

Stamp duty is a state levy and is payable on certain types of instruments, i.e. documents. In respect of immoveable property the stamp duty is generally payable on the basis of the market value of the property at different rates, depending upon the nature of the transaction, i.e. sale, lease, release, etc. The State Government fixes market value of all properties in an area at the beginning of each calendar year and the market value so fixed is required to be accepted as the basis for calculating stamp duty in respect of an instrument, i.e. document by virtue of which property is dealt with. Different rates of stamp duty are applicable in different states. The rates generally range between 5% and 15%. Further, property transactions are also subject to registration fees.

Municipal tax

Municipal corporations or other local bodies are entitled to recover property taxes from buildings constructed in cities and towns. The property taxes are levied on ‘rateable values’, fixed on the basis of market value of the property or the rental returns, which the property owners derive from the property.

Service tax

In principle, service tax at the rate of 12.36% (with effect from 1 April 2012) is levied on the gross value of taxable services, which includes services rendered in the course of construction projects, property management and works contracts. Service tax is also levied on purchase of property under construction. The service tax is charged by the service provider and is recovered from the recipient of service. However, in certain cases, service tax is payable by service receiver.

Rent on immovable property, used for commercial purpose would also be subject to service tax.

It may be noted that there is an exemption from service tax to the developer of the SEZ and the SEZ units to carry on authorised operations in the SEZ. However, the same would be subject to fulfilment of specified conditions.

Value Added Tax (VAT)

Value Added Tax is imposed on purchase of under construction property, subject to certain conditions, in some states. The tax rate varies from state to state.

Goods and Service Tax (GST)

GST, which is proposed to be introduced shall subsume all the indirect taxes (VAT, Service Tax, Excise Duty, Customs Duty, etc.) both at the Central and State level. GST shall comprise of both goods tax and service tax. Central and State Government shall have the powers to levy tax on supply of goods and services.

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