Transactions in Immovable properties

Recent amendments &
Other contemporary issues

Transferor

Immovable property (being ‘land’ or ‘building’ or ‘both’)

Sale Consideration

Transferee

Nature of Income:

- Depends on the treatment/manner of dealing with immovable property
- Typically

a) Capital Gains – where the immovable property is held as ‘capital asset’; (or)

b) Business Income – where the immovable property is held as ‘stock in trade’

Capital Gains - Implications in the hands of transferor

Particulars	Amount
a) Sale Consideration	XXXX
b) Less: Expenses incurred wholly and exclusively in connection with such transfer	(XXX)
c) Less: Indexed Cost of acquisition/Improvement	(XXX)
Capital Gains ((a) – (b))	XXXX

Period of Holding of the Immovable Property:

- 0-24 months > Short term capital asset > Short term capital gains > Without indexation> Taxation at Applicable rates
- Beyond 24 months > Long term capital asset > Long term capital gains > With indexation> Taxation at 20% (to be increased by surcharge and cess as applicable)

<u>Sale Consideration:</u>

- Section 50C – full value of consideration on transfer of immovable properties for the purpose of computation of capital gains
- 10% safe harbour limit for operation of Section 50C – w.e.f. FY beginning 1 April 2020 (amended vide the Finance Act, 2020 – previous safe harbour limit was 5%)
- Corresponding Section 43CA – for full value of consideration under computation of business income

<u>Cost of acquisition:</u>

- Section 55 – amended to limit the cost of acquisition in respect of immovable properties acquired before 1 April 2001 to Stamp duty value as on the said date.

Capital Gains - Implications in the hands of transferee

Particulars	Implications
Gift/Inadequate consideration	Section 56(2)(x) -Triggered on higher of the following: • Stamp duty value exceeds the consideration INR 50,000; (or) • Stamp duty value is more than 110% of the consideration (previously 105% - amended by Finance Act, 2020 to be in line with Section 50C and 43CA)
Withholding tax obligations	Section 194IA: • Transfer of immovable property (other than agricultural land) • Consideration paid in excess of INR 50 lakhs • TDS deductible – 1% If seller is a non-resident – Withholding tax under section 195 at the applicable rates in force
Stamp duty	• Stamp duty at the rate of 11% (including registration charges)

- Sale of immovable property should not be subject to GST

Acquisition of immovable property – other considerations

Typical contracting methodology in Tamil Nadu:

- Sale deed for conveyance of UDS in land
- Construction agreement for construction of apartment

Particulars	Implications
Withholding tax obligations	Section 194IA – 1% on transfer of immovable property Consideration paid in excess of INR 50 lakhs **Section 194M - TDS on construction service contracts (individuals and HUF payers) – similar to section 194C:** • Consideration paid in excess of INR 50 lakhs • TDS deductible – 5%
Stamp duty	• Stamp duty at the rate of 11% (including registration charges) • Stamp duty at the rate of 2% on the construction agreement
GST implications	• Rates depending on date of commencement of project - Pre 1.4.2019 – 12% (with input credit) - Post 1.4.2019 – 5% (without input credit) • If sale is made post receipt of Completion Certificate (CC) and entire consideration is received post CC, GST is not applicable

Other modes of transfer and key considerations

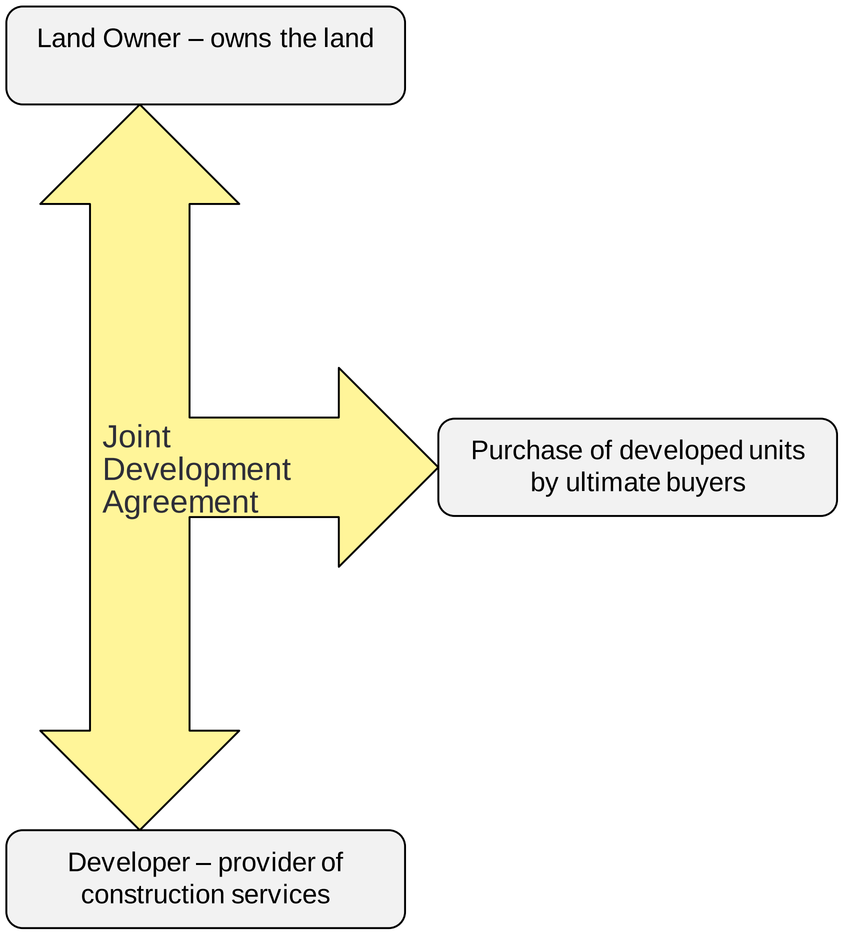
Transfer of shares of a company holding land

- Full value of consideration on transfer of shares other than a quoted share – Section 50CA
- Applicable valuation rule – Rule 11UAA (with effect from 1 April 2018) – refers to Rule 11UA
- Rule 11UA amended with effect from 1 April 2018 to factor the guideline value of immovable property in determining the FMV of unquoted shares
- Stamp duty – 0.25% of the consideration received on transfer of shares where the shares are not dematerialised.

Merger/Demerger of entities holding land

- 2% of the market value of the immovable property of the transferor company;
- 0.6 % of the aggregate of the market value of the shares or the amount of consideration paid for such amalgamation, whichever is higher.

Popular monetisation method - JDA



a) Types of JDAs:

- Revenue share JDA
- Area/Property share JDA

b) Section 45(5A) – taxation in the hands of land owners; Applicable only to individuals and HUF

c) Characterisation of income and point of taxation in the hands of land owners – still unclear/prone to litigation

d) Risk of the agreement being considered as AOP

e) GST implications on JDA

- in the hands of developer
- in the hands of land owner

JDA - Practical issues

For Developers:

- Accounting treatment – Percentage of completions vs Project Completion method. Companies following IndAS may also need to factor the timing of transfer of effective control.

- Accounting for landowner’s share of revenue

- Receipts vs Taxable Income mismatch:

  - Reconciliations between Form 26AS and taxable turnover as per ITR sought by tax authorities

    - PoCM vs actual receipts as per 26AS
    - Actual receipts vs share given to land owner

  - Reconciliations between GST Returns and taxable turnover as per ITR sought by tax authorities
    - PoCM vs actual receipts as per GST returns
    - Actual receipts vs share given to land owner

- Timing differences result in TDS credit issues

- Section 23(5) – deemed rental income in the hands of the developers in respect of unsold units

- GST implications – Pre and post 1 April 2019

- Input tax credits – issues relating to claiming ITC

JDA - Practical issues

For Landowners:

- Characterisation of income
- Receipts vs Taxable Income mismatch - Reconciliations between Form 26AS and taxable turnover as per ITR sought by tax authorities
- Section 45(5A) – presently covers only individuals and HUF – timing of taxation in case of tax payers other than individuals and HUF still not clear

Other Amendments

Extending the time-limits for tax incentives related to affordable housing

- Section 80-IBA grants 100% income linked tax holiday to developers of affordable housing projects, subject to specified conditions. One of the conditions for availing the tax holiday under Section 80-IBA is that approval of project be after 1 June 2016 and on or before 31 March 2020.

- Budget 2020 has extended the tax incentives for developers engaged in the business of developing and building affordable housing by relaxing the cut-off date for approval of the affordable housing projects. Developers will be entitled to avail exemption from profits where project has been approved by the competent authority on or before 31 March 2021 (previously sunset date under Section 80-IBA of the IT Act for was 31 March 2020)

- Finance Act (No. 2) 2019 inserted a new deduction for interest on housing loan, subject to fulfilment of specified conditions. One of the conditions is that loan should be sanctioned during the period from 1 April 2019 till 31 March 2020.

- In continuance with amendments provided in the Finance Act 2019, home buyers can avail interest deduction where loan for affordable housing as defined has been approved on or before 31 March 2021 as against the previous sunset clause of 31 March 2020.

Thank you

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