

# Gujarat Chamber of Commerce & Industry



ગુજરાત વેપારી મહામંડળ ૧૯૪૯ થી કાર્યરત

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Date: 16<sup>th</sup> June, 2020

To,  
**Smt. Nirmala Sitharaman**  
Hon'ble Minister of Finance & Corporate Affairs,  
Govt. of India  
A-Wing, Shastri Bhawan, Rajendra Prasad Road  
New Delhi-110 001

**Sub: Suggestions relating to Direct Taxes to support real estate sector – Suspension of section 43CA, 50C & 56(2) of Income Tax Act, 1961 from 1<sup>st</sup> April, 2020 till 30<sup>th</sup> June, 2021**

Respected Madam,

We would like to place on record our sincere appreciation to the laudable efforts taken by the government towards fighting the COVID-19 pandemic and also applaud the recent relaxations and support given by bringing in the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 and economic stimulus package of Rs. 20 lakh crore under the Atmanirbhar Bharat Abhiyan. The approach espoused by extending due dates, waiver of penalty for different regulatory and statutory aspects to address the myriad problems faced by residents in dealing with the coronavirus is exemplary. India's pre-emptive lockdowns have saved many lives and may have reduced long-run economic costs of the Covid-19 crisis. This regime has provided us with new hope and optimism for a future bereft of the virus.

**Gujarat Chamber of Commerce and Industry ("GCCI")** hereby takes the privilege to address the concern of its members, being members of trade and industry, Chartered Accountants, Advocates and Tax Practitioners, on Issues in Implementation and Compliance with Income Tax Laws, which needs to be addressed by your good office on utmost priority.

The primary objective of GCCI is not only to work for the cause of the trade but also to educate the public at large and to act as a catalyst between citizens and the government authorities. The Direct Tax Committee of GCCI is one of the most important committees of GCCI which is engaged in the matters related to direct taxes and makes representations to the Government, Central Board of Direct Taxes and at other appropriate forums from time to time on various legislative amendments and issues concerning direct taxes and endeavours to be a bridge between the tax payers and the tax administration.

**Durgesh V. Buch**  
President

**Natubhai Patel**  
Sr. Vice President

**Bhargav Thakkar**  
Vice President

**Sanjeev Chhajer**  
Secretary

**Dilip M. Padhya**  
Secretary (R)

**Pathik S. Patwari**  
Treasurer

**Extract of the speech of Hon'ble Union Railway Minister and Union Minister of Commerce and Industry, CA Piyush Goyalji in the webinar held on 3<sup>rd</sup> June, 2020 with real estate sector developers:**

**Quote**

*"We are trying to see whether we can bring in some concession in ready reckoner (or circle) rates. But if that does not happen, you (real estate developers) have to sell the inventory. But unless you reduce your rates, believe me you will be stuck with your material, you can choose to be stuck with the material and default with the bank and then the material goes away or you can choose to get rid of whatever you quote at high prices. You can take as a bad decision or unfortunate situation and move forward. If any of you feels that government will be able to finance in such a way that hold longer and wait for the market to improve, market is not improving in a hurry. **Things are seriously stressed and your best bet is sell.** And those who have sold should leverage less or get rid of their bank loans and survive the downturn. Those who are saddled with large loans would kept holding on to prices and have suffered and my conscience is clear in every interaction of mine I have said this point"*

**Unquote**

The Real Estate Sector ("the sector") needs a bigger dose of corrective measures and concessions to bring out this sector from the red. Further to what Hon'ble Union Minister CA Piyush Goyalji said in the webinar, following are the difficulties faced by the sector:

- ❖ Severe Cash Crunch
- ❖ Sales slowdown & liquidity issues
- ❖ Non-availability of labourers and delay in construction
- ❖ Increased cost of supply materials
- ❖ Heavy debts

Hence, we would like to draw your attention to the following sections of the Income Tax Act, 1961 ("the Act") which are now impacting the real estate sector the most:

**Major Sections of Income Tax Act, 1961 ("the Act") impacting real estate sector in these tough times:**

There are certain sections in the Act which contain **deeming provisions** that consider the stamp duty value as the full value of consideration, if actual sale consideration is less than the stamp duty value. If real estate developers/builders sell at less price than market value (distress sell) then they will be hit by the following sections and will have to pay tax at higher value (which will never be realized) which is unfair or unjustifiable for the real estate developers/ builders.

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**1. Section 43CA - Special provision for full value of consideration for transfer of assets other than capital assets in certain cases:**

*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.*

*Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.*

**2. Section 50C - Special provision for full value of consideration in certain cases:**

*Where the consideration received or accruing as a result of the transfer by an assessee of 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 (hereafter in this section referred to as the "stamp valuation authority") 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 section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.*

*Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.*

**3. Section 56(2)(x):**

Where any person receives, in any previous year, from any person or persons, will be chargeable to tax under income from other sources, if—

(a) any immovable property

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the **stamp duty value of such property; for a consideration**, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) The amount of fifty thousand rupees; and

(ii) The amount equal to **five per cent of the consideration**

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From the plain reading of the above section it is clear that only 5% relaxation has been given vis-a-vis the market value arrived as per the existing circle rates of the properties. Post COVID-19, the prices of real estate have fallen down by more than 30% throughout the country and in many cases the market prices are below the circle rates. Under these adverse circumstances, the developers / builders are under acute financial pressure and are prepared to sell their inventories as 'Distress Sale'. Their negotiating power has fallen and they succumb to the wishes of the new customer's bargaining power, provided they are getting instant payment. In such a situation they are forced to sell the property at the actual existing price or at a discount to the existing market price, depending on the business expediency and fund requirements. However, for the purpose of taxation as mentioned above, they have to pay tax considering the circle rates which are higher than the actual sales realization.

The consideration at which the sale deeds are being executed is thus the actual market value of the immovable property whereas the buyers are constrained to pay stamp duty as per the prevalent circle rates, which are merely guidelines and do have no legal binding force.

**Thus the real estate developers & the buyers are forced to pay Income Tax on the notional income which none of them have earned.** Since the developers / builders are debt ridden and have poor liquidity, they are forced to sell the properties at the existing depressed market rate and the buyers (already under severe cash crisis due to COVID-19) are forced to pay stamp duty on the existing circle rates, which are exorbitantly high, giving rise to taxable notional income although neither the buyer has paid any amount in cash to the developer nor the developer has received any amount in cash nor the buyer has paid anything over and above the consideration but is mandated to pay additional Income Tax from their own pocket. **This is against the well settled principles of "Real Income" as propounded by the Apex Court in a number of cases.**

*In addition, it is pertinent that there are a catena of cases decided by the Hon'ble Supreme Court of India wherein they have categorically held that the circle rates are merely guidelines and do not have a binding effect on the actual valuation of the immovable property. For instance, Hon'ble Supreme Court in the case of Jawajee Naqatham v. Revenue Divisional Officer [1994] 4 SCC 595 held that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp could not form the foundation to determine the market value of the acquired land under section 23 of the Land Acquisition Act, 1894.*

***Based on above factors we propose for timely suspension of Sections 43CA, 50C and 56(2)(x) of the Income Tax Act, 1961 from 1<sup>st</sup> April, 2020 till 30<sup>th</sup> June, 2021 So that real estate developers and investors can sell their properties at reduced market prices and will get taxed on the realized consideration instead of deeming provision. This will reduce the tax burden on real estate sector by suspending taxability on unearned income.***

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We all are facing this unprecedented situation and we require your co-operation and patient hearing to our concerns. We would be very grateful if your goodself would take an early action in this regard and have a positive consideration of our requests. This will be very useful for the taxation fraternity and also for the trade and industry. In conclusion, we request that a suitable orders / clarification may be issued to this effect at the earliest.

With warm regards,

Sincerely yours,

**Durgesh V. Buch**  
President

**Jainik Vakil**  
Chairman  
Direct Tax Committee

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