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(Direct Tax Representation Committee)

(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)

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ETHICS EDUCATION EXCELLENCE

Ref. No. ..... Dated: 12.11.2020

Hon'ble Smt. Nirmala Sitharaman
Union Finance Minister
Government of India, Ministry of Finance,
North Block,
New Delhi- 110001

Respected Madam,

Sub: **Suggestions for changes in the Income-tax Act, 1961 through Finance Bill, 2021**

We are grateful to you for your very valuable suggestions made on 6th November, 2020 while inaugurating the National Tax Conference, 2020 of our All India Federation of Tax Practitioners.

2. As you are well aware, the All India Federation of Tax Practitioners (the Federation in short) is one of the largest professional bodies of tax practitioners, advocates and chartered accountants - both of direct and indirect taxes. It has been functioning for the last about 44 years since 1976 and has a membership of over 9000 individuals and about 130 Tax Bar Associations located all over the country in 27 out of 29 States.

3. The AIFTP has been making suggestions for changes in the income tax law every year to make its working more reasonable, fair and certain. Several of our suggestions have been receiving favourable consideration by the Government.

4. Keeping in view the economic down turn in the light of the Covid pandemic and the urgent need for spurring economic activity, the Federation would like to make the following suggestions for changes in the Income-tax Act, 1961 through the forthcoming Finance Bill, 2021 for your kind consideration:-

(i) Personal income tax – rationalization of tax slabs

5. We appreciate the alternate tax regime offered for personal taxation under section 115BAC of the Income-tax Act, 1961 (the Act). However, personal income tax exemption limit and slab rates need to be reviewed to accelerate the tempo of economic growth by increasing the aggregate demand in the country. We suggest that the income tax exemption limit across the board should be fixed at Rs. 4 lakhs and the tax rate for the slab Rs. 5 lakhs to Rs. 10 lakhs may be fixed at 10 per cent; next slab may be from Rs. 10 lakhs to Rs. 20 lakhs with tax rate of 15 per cent and on income in excess of Rs. 20 lakhs, the tax may be charged at 25 percent. Corresponding adjustment will also need to be made for senior tax payers in the age group of 60 to 80 years and above 80 years. Such a tax regime will also incentivize the true and full disclosure of income by the tax payers.

(ii) Minimum Alternate Tax (MAT) – Reduction in the rate of tax

6. (a) We feel that with the phasing out of exemptions and incentives under the Act, the current rate of MAT of 18.5% is rather high and has impacted significantly the cash flow of companies which otherwise have low taxable income or have incurred tax losses. With the phasing out of exemptions and deductions available under the Act, the burden of MAT also needs be gradually reduced from the current levels of 18.5 per cent to 15% which will also be commensurate with the phasing out of tax exemptions and incentives.

b) Presently, the brought forward loss or unabsorbed depreciation is allowed as deduction while computing the book profit for the purpose of MAT. This provision adversely affects companies which have large book losses and very small unabsorbed depreciation as they are made

to pay MAT despite having large amount of book losses thereby affecting their cash flows. It is suggested that the provision of taxing book profits should be made more inconformity with the principle of capacity to pay. For this purpose, both the amount of depreciation and brought forward losses should be fully allowed even for the purpose of MAT. Moreover, to avoid unnecessary litigation, the methodology for computing loss brought forward and unabsorbed depreciation as per books of account need to be specifically provided in section 115JB of the Act dealing with the taxation of book profits.

(iii) Deduction of expenditure on Corporate Social Responsibility (CSR)

7. Explanation-2 to section 37(1) of the Act provides that the expenses incurred by a taxpayer equal to 2% of the yearly net profits on the activities relating to CSR as referred to in section 135 of the Companies Act, 2013 are not deemed to have been incurred for the purpose of business and are, therefore, not allowed as a deduction for computation of taxable income. The expenditure in corporate sector effectively assists the Government in undertaking social projects for the welfare of the weaker sections of the society. Therefore, the provision for not allowing the deduction for such expenditure appears to be unfair and should be made deductible in computing the taxable income of the companies.

(iv) Presumptive Income in the case of professionals

8. The presumptive income under section 44ADA of the Act is taxed at the rate of 50 per cent of gross receipts presuming the remaining 50% as expenditure for the purpose of earning the income. Taxing 50 per cent of the gross receipts of the professionals is quite excessive even while we compare the same with the presumptive income of 8 per cent or 6 per cent, as the case may be, for computing profits and gains of business, as prescribed under section

44AD of the Act. The presumptive income in case of professionals should be at the rate of 30 per cent of gross receipts and 70 per cent thereof should be allowed as expenditure. It may be noted that RV Easwar Committee had suggested the taxation of only one third of gross receipts of professional receipts. The realistic presumptive rate will encourage more and more professionals to opt for the scheme under section 44ADA of the Act and Government will gain in tax revenues from professionals through better compliance.

(v) Section 10(10B) – Exemption in respect of compensation received on retrenchment of a worker

9. Section 10(10B) of the Act provides for exemption from income tax of compensation received on retrenchment of a worker under the Industrial Disputes Act or under any other Act or Contract of Service, etc. subject to the limit of the amount as calculated as per section 25F of Industrial Dispute Act or amount as may be notified which at present is only Rs. 5 lacs. The term 'worker' has been defined to mean the worker under the Industrial Disputes Act, 1947.

10. In case the exemption is available only to a worker covered under the Industrial Disputes Act, then compensation will obviously be paid to such workmen u/s 25F of the said Act. Accordingly, there is no need to prescribe any other monetary limit. Besides, reference to any other Act, contract, award, etc. will not be required.

11. It is suggested that the scope of section 10(10B) need to be extended to all the employees whether covered under the Industrial Dispute Act or not and a limit for the purpose of exemption should be prescribed on the basis of retrenchment compensation for which a workman is entitled u/s 25F of Industrial Dispute Act or any other limit as may be considered appropriate.

(vi) Time limit for carrying out rectification or appeal effect by the Assessing Officer or passing order by an Appellate Authority

12. Presently, the Act provides for time limit for completing the assessment of income by the Assessing Officer. If the assessment is not framed within the specified time, the Assessing Officer cannot pass the assessment order thereafter. Similar should be the position with regard to rectification or giving of effect to the appellate orders. If the Assessing Officer does not take the necessary action within the stipulated time limit to rectify the mistake or give effect to the appellate order, the matter should be deemed to have been decided in favour of the assessee and no adverse order need be passed thereafter. Otherwise, placing time limits for rectification or giving appeal effect of a directory nature does not bring about the desired results and such matters continue to linger and remained pending with the Assessing Officer almost indefinitely.

13. Besides, if the appeal is not decided by CIT(A) within the time limit u/s 250(6A) of the Act, it should be deemed to have been allowed in favour of the taxpayer. Making the aforesaid provisions in the Act will not in any way bring any adverse result for the obvious reason that when there is compulsion under law the Assessing Officer or the CIT(A) will be legally obliged to take the necessary action within the stipulated time limit and this will also increase the efficiency of the officers in the performance of their functions.

(vii) Tax rate under section 115BBE

14. Earlier, the assessee was not concerned whether the department is treating any income as deemed income or as business income because the same was taxable at the same maximum rate of thirty percent. But, after amendment in section 115BBE from the A.Y. 2017-18, this matter has become very important and if the Department treats the surrendered income as deemed income, it will be subjected to tax at the rate of 60 percent plus 25 per cent surcharge

and education cess. The effective aggregate rate u/s 115BBE now comes to 78 per cent. Besides, penalty under section 271AAC of the Act may also be levied @ 10 per cent of tax, which will make the overall tax burden at about 85 per cent. Such a high rate of tax will be confiscatory in nature. This section was introduced to tax undeclared amount of money at the time of demonetization of high denomination notes. Its continuance is leading to lot of avoidable tax litigation. It is desirable that the rate of tax u/s 115BBE of the Act should at best be 30 per cent or the maximum marginal rate should be brought back to pre A.Y. 2017 -18 levels.

(viii) Initiation of tax recovery proceedings against directors of companies u/s 179 of the Income-tax Act

15. In many cases, provisions of section 179 of the Act for recovery of a company's income tax from its directors are being resorted to by the Assessing Officers even prior to decision in appeal by CIT (A) or ITAT and also without exhausting the remedy for recovery of tax demand against the income of the company. Provisions of section 179 need to be resorted to only if the tax demand has been finally determined and the Assessing Officer is not able to recover the same from the company. Proceedings are not to be used for harassment of the directors or threatening them by attaching their personal bank accounts when the company and its directors constitute different taxable entities. Necessary clarification or a specific provision to this effect needs to be made in the section 179 of the Act to this effect.

(ix) Specific provisions in the Act for payment or refund of interest to and from the Department

16. As per the existing legal position, any interest paid by the assessee to the Department is not allowable as deduction in computing the income whereas any interest received from the Department is chargeable to tax. Difficulties arise particularly in cases where the Department has allowed the

interest to an assessee on the amount of refund but subsequently, as a result of the adverse order in appeal, such interest has to be returned back by the taxpayer to the Department.

17. It is recommended that there should be a specific provision in the Act that any repayment of interest earlier given by the Department and included in the taxable income should be allowed as deduction in the year such interest is re-paid to the Department by the taxpayer. Further, it should be specifically provided that the amount of interest allowed by the Department will be chargeable to tax only in the year in which amount is actually received by the assessee by way of a cheque or credit to his bank account or on receipt of intimation or information for adjustment of refund against any tax demand due from him.

(x) Widening the definition of a 'professionals' for the purpose of sec 44AA, 44ADA and 194J of the Act

18. For the purpose of Sec 44AA of the Act, only some legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration, or any other notified profession (i.e., authorised representative, film artist, company secretary and information technology) are specified professions.

19. For this purpose, an authorised representative means a person who represents any other person, on payment of any fee or remuneration, before any Tribunal or authority constituted or appointed by or under any law for the time being in force. However, it does not include an employee of the person so representing or a person carrying on legal profession or a person carrying on the profession of accountancy.

20. We suggest that all professions (including management consultancy, financial consultancy, should be covered within the meaning of section 44AA as the same is also

applicable for the purpose of sections 44ADA and 194J of the Act.

(xi) Non-levy of GST on income tax collected at source – Section 206C

21. Section 206C of the Act provides for the levy of collection of tax at source at the rate of 1% of the sale proceeds of certain items like minerals, timber, scrap, alcohol, liquor etc. The sale proceeds include the Goods and Services Tax (GST). Being part of the gross receipts recoverable from the buyer, the income tax collected also gets charged on the GST. It is not the intention of the Parliament to charge income tax on GST which does not form part of the taxable income. It is, therefore, suggested that section 206C of the Act may be amended to exclude GST and any other tax which is not included in the sale proceeds in computing the income of a taxpayer which is chargeable to income tax.

22. We shall be grateful for your kind consideration of the above suggestions and acceptance thereof where found feasible.

Wishing you a Happy Diwali & New Year

Yours sincerely,

S.R. Wadhwa,
IRS (Retd)