All India Federation of Tax Practitioners

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

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Date. 21-02-2022

Smt. Nirmala Sitharaman ji
The Minister of Finance
Government of India
North Block
New Delhi

Sub: Post Budget memorandum for kind consideration

Respected Madam,

AIFTP takes the opportunity to present some relevant issues for your kind consideration in the form of Post Budget memorandum for your kind consideration and if found appropriate, for incorporation in the Finance Bill:-

1. 194-IA has been proposed to be made applicable on stamp duty value, whereas Sec. 50C and Sec. 56(2)(x) of the act allows 10% of the variation on transaction value, the same variation should be made applicable for deduction of tax U/s 194-IA .

2. For the purpose of Section 28(iv) TDS U/s 194R is proposed @ 10%, if the perquisite is passing in kind and also in cash or only in kind and where the cash perquisite is not sufficient to cover the TDS amount deductible U/s 194R, it is proposed under the first proviso to Sec. 194R that,"*Provided that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that tax has been paid in respect of the benefit or perquisite*",
i.e. before release of perquisite in kind tax should be paid,but the language of the proposed section 194R doesn't specify who will pay the tax, whether recipient or the person responsible to deduction ?
The same vague phraseology is used presently U/s 194B :-
"***194B.*** *The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding ten thousand rupees*

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shall, at the time of payment thereof, deduct income-tax thereon at the rates in force :

***Provided** that in a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings*".

If the person responsible for deduction has ensured that the recipient has paid the tax on the amount of perquisite going to be received by him and has produced the challan to the deductor then how the deductor will be able to incorporate this challan amount in his TDS statement to be filed in form 26Q, because in form 26Q only TDS challan paid through TAN is considered whereas, many times it may be possible that the recipient has no TAN or even if he has TAN why he will pay tax under TAX of deductor. Therefore the language must clarify that the deductor should collect the deductible tax amount from the recipient and thereafter will release the perquisite in kind and deductor will deposit the tax in accordance with provisions of Sec. 200(1) of the act.

3. Section 68 making it necessary to establish the source of source of the credit entry, is going to be made applicable to all kinds of taxpayers by the proposal of this finance bill. It is going to cause huge responsibility and huge practical problems amongst small taxpayers and going to create huge litigation in future and many times it is not practical for the person accepting the loan to ask for source of loan from the lender, and will violate privacy of the lender also. Therefore it is requested that the said new proposal should be removed in the interest of the taxpayers as well as revenue.

4. It is proposed to make Disallowance U/s 14A, of expenses incurred to earn any exempt income and also in a condition where there is no exempt income. There can be instances where there are no cash funds and it may become burdensome for the assessee to pay the taxes. To meet such eventualities the liability should be permitted to be capitalised.

5. Insertion of proviso to section 201 (1A) takes away the right to deny liability for interest which is not in the interest of natural justice.

6. In order to promote the start-up ecosystem in the country, it was envisaged in 'Start-up India Action Plan' to establish a Fund of Funds.

	With a view to provide tax incentive for investment in Fund of Funds, section 54EE

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was inserted in the Income-tax Act so as to provide exemption from capital gains if the long term capital proceeds are invested by an assessee in units of notified fund subject to condition that the amount remains invested for three years failing which the exemption shall be withdrawn.

The investment in the units of the notified funds is allowed up to Rs.50 lakh. Clause (b) of Explanation 2 to section 54EE defines "long-term specified asset" means a unit or units, issued before the 1st day of April, 2019, of such fund as may be notified by the Central Government in this behalf. However, as on date no such fund u/s 54EE has been notified by the Government. It may be noted that relevant date of 01.04.2019 has long passed but no such fund has been notified for claiming exemption u/s 54EE.

It is suggested that specified fund u/s 54EE may be notified at the earliest so that exemption can be claimed by investing the amount in the units of such fund as envisaged.

7. Calculation of the Interest u/s 201(1A) of the Act for the delay in deposit of TDS :- The current provision u/s 201(1A) states that interest is payable from the date of deduction to the date of payment. Even a part of the month is to be considered as a month. Even in a situation where the delay is of 1 day (i.e. TDS deposited on 8th of the succeeding month instead of 7th), at present, interest will be calculated for 2 months.

   There is need to bring out clarity on this issue since even a single day's delay leads to a 2 months' period instead of 1 month which is penal and injudicious in nature

   Sec 201(1A) should be amended to provide interest only for the period of delay. Suitable changes may also be made in the TDS utility adopted by the Central Processing Centre (CPC).
8. Concessional tax rate should be provided for firms/LLPs like Companies.
9. Section 54B exemption may be allowed even if the new agricultural land is purchased before the sale of agricultural land in same way as in section 54.
10. Presently the permissible time limit for investment to be made in specified bonds is only 6 months from the date of the transfer. Apart from being small period, there are various other practical difficulties and such time limit is not at par with the time limits provided under other similar exemption provisions viz. S.

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54/ 54B/54F etc. which permits the assesse to deposit money in Capital Gain Account Scheme upto the due date of filing of ITR. The assesse may not be fully aware of the limit of 6 months and therefore he is likely to lose the benefit of exemption. Such time limit exactly expires at the end of six months. Hence it is difficult to keep a track. The other similar exemption provides more time. Also there is some disputes in ascertaining the actual date of transfer so as to correctly reckon the period of six months. Refer **Anil Dulichand Jain vs. ACIT ITA No. 4922/Mum/2016**.

It is suggested that S. 54EC be amended so as to provide time limit for making investment in the specified bonds upto the due date of filing of ITR.

11. That the phasing out of exemptions and incentives under the Act, the current rate of MAT of 15% w.e.f. asst. year 2020-21 is quite high and has impacted significantly cash flow of companies who 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 should also be reduced to 12 per cent (in place of current level) so that it may commensurate with the phasing out of tax exemptions and incentives. Presently, the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account is allowed as a deduction while computing book profit for the purpose of MAT please refer Expl 1 part 2 item (iii) to 115JB. The said provision adversely affects companies which have huge book losses and lesser unabsorbed depreciation as they will have to pay MAT despite having ample amount of book losses thereby affecting their cash flows. It is suggested to review the provision to make it liberal. Both depreciation and brought forward losses should be fully allowed even for the purpose of MAT. The methodology for computing loss brought forward and unabsorbed depreciation as per books of account may be specifically provided in section 115JB of the Act.

12. We would like to mention that MAT under sec. 115JB in case of Companies is now 15% w.e.f. asst. year 2020-21. Therefore there is no justification in charging higher rate of AMT @18 per cent in case of taxpayers (other than companies). It should have level playing field. Rather with the phasing out of exemptions and deductions available under the Act, the burden of both AMT and MAT should also be reduced to 12 per cent (in place of current level) so that it may commensurate with the phasing out of tax exemptions and incentives.

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13. The faceless appeals and assessments under sections 142B and 144B of the Act were introduced in order to ease the process for the assessees as well as the Department which is a welcome move. The Department, the assessees and the Professionals need to come to a common consensus in terms of the mechanism to be used effectively. But ironically, they have brought in more anxiety and uncertainty with respect to satisfaction of the assessing officer since it is unclear as to whether the assessing officer is satisfied with the submissions/ replies/ documents furnished or whether the assessee needs to further substantiate on the points under scrutiny. It may also be appreciated that faceless assessments and appeals are yet to become seamless given the various glitches on the Income Tax portals that have been observed over the last two years.

    It may be appreciated that for matters involving complex issues, it may not be possible to put all the arguments, contentions and submissions in writing. The Faceless Appeal Scheme, 2021 states that the hearing of cases by the CIT(A) can be done through Video Conferencing and it is expected that a similar facility may be provided for assessments also so that the hearing and submissions attain better clarity and closure.
    Network connectivity is a further question of concern in various towns/ cities of India since the internet bandwidth might still be an issue and technological tools may need upgrading/ enhancement.

    For the above reasons, it is suggested that a threshold limit needs to be set wherein cases involving disputed taxes/ amounts in excess of a specified amount may be referred for faceless assessments/ appeals and the remaining cases may still be heard physically, thereby easing the process of assessment and appeals for small taxpayers.

14. Time limits have been specified for most aspects under the Act. Similar time limits need to be brought in for disposing off the appeals filed before the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal. As per the provisions of section 250(6A) of the Act, the Commissioner of Income Tax (Appeals) needs to pass the order under section 251 of the Act within a period of one year from end of financial year in which appeal is filed (where it is possible). This is only recommendatory and not mandatory. An upper **time limit of 2 years** needs to be fixed which seems reasonable for the CIT (A) to pass his order in order to ensure early disposal of matters and timely rendering of justice.

    Similarly, the provisions of Section 254 states that the Tribunal may decide the appeal within 4 years from the end of the financial

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year in which such appeal was filed under section 253(1) or (2) of the Act. Since this time limit is also only recommendatory in nature, this time limit of 4 years needs to be made mandatory to dispose off the matters to ensure that the motto of Easy & Speedy Justice in setting up the oldest tribunal in the country is followed in letter and spirit.

15. During search and survey proceedings, assessees were forced by the Department officials to make confessional statements regarding their incomes / assets. The CBDT issued a strict instruction in this regard barring the officials from recording confessional statements using coercive methods vide Instruction F. No. 286/2/2003-IT (Inv. II) dated 10-3-2003. This was issued since mere confessional statements do not stand the test of evidence. It is settled law that no addition can be made merely on the basis of the admission statement unless there are corroborative evidences or findings for the same. The statement of oath recorded carries a lot of evidentiary value in the subsequent proceedings.
Therefore, it is appropriate that proper mechanism is brought about to capture all the relevant information of the assessee and ensure that the undisputed taxes are collected in time. The mode and manner of recording, format in which details need to be recorded, time limit for such recording, etc. needs to be specified so that any lacunae in the statements recorded can be avoided and will aid the process of search assessments better.

16. Barring extraordinary situations, retrospective amendments must be prohibited under the Income Tax Act for various reasons. Firstly, making a law effective from a point of time in the past is unjust and irrational since the assessee has already acted in the past based on the existing conditions at that point in time. Secondly, the act of making retrospective amendments breaks the trust and accountability placed on the Government by its people since what is legal today can be termed illegal at a later point in time only because the Government felt so, after many years. Also, the effect of retrospective amendments is that it has tarnished the status of India as a global investment destination in the eyes of the global investor who did not want to invest in a land of legal uncertainties.

It is only fair that the assessee is not penalised for an act done in good faith and as per law, in the past and hence the retrospective amendments which may put the assessee into undue hardship needs to be avoided at all costs.

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However, where the amendments are in the nature of explanations/ clarifications/ beneficial to assessee or are curative in nature, such amendments can continue to be retrospective where found necessary.

For example, the recent amendment to Section 36(1)(va) wherein the due date for remittance of employees' share of Employee Welfare Funds stated that section 43B would not apply and would be considered to never have applied to determine the due date. This amendment is clarificatory in nature and the Department officials should be given appropriate directions to apply provisions in the right manner as intended by the statute and avoid unnecessary litigation on the same.

17. Sec. 44AE needs to be merged under sec. 44AD.

18. There are some orders which are non-appealable.The portal does not permit filing of appeal u/s 272A(1) which is not justified at all. Every assessee must get opportunity to appeal against any order which he considers as unjustified. This is the requirement of Natural Justice and hence the IT portal may be changed appropriately so as to permit appeals against all possible orders.

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