All India Federation of Tax Practitioners

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

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21st May, 2024

To,
Smt. Nirmala Sitharaman
Hon'ble Minister of Finance,
Ministry of Finance Government of India,
North Block,
New Delhi 110 001
Email: fmo@nic.in; appointment.fm@gov.in

Respected Madam,

Sub: **Memorandum for Union Budget 2024**

We are the Association representing the highest number of tax professionals from all over India. The top most legal luminaries are the members and advisors on Tax issues and always keep in mind to implement the Government policies and try to interpret the law in accordance with the intentions stated in the memo explaining the provisions of the Finance Bill/ Act. Still, we feel that there are some short comings in the law which, we feel as our duty to bring it to the notice of the Government with a request for effective remedies as may be considered proper.

Suggestions regarding Direct Tax

(i) **Tax Rates in case of Individuals:** The tax rates are by and large reasonable. However, in so far as the tax rates on Individual tax payers are considered, the same are on higher side. The highest tax rate on individuals is more than 39%. The lower tax rate on corporate assesses is 15%. It may be kept in mind that the income of the individuals mostly includes from such sources on which GST is also paid which is about 18%. Further the GST collection has also mounted to unexpected heights. In fact, the GST collection is without any hazards and is automatic. Keeping overall tax structure in mind, the tax rates on individuals may be reconsidered and may please be reduced by at least 7%. Even if the same is reduced by 7%, still the individuals will suffer highest rate. This can be done by reducing the maximum marginal rate to 23 per cent and also suitably bring down the surcharge rates.

(ii) **Tax Rates in case of LLPs:** In the present scenario the status of LLP and companies in so far as the status and legal requirements are concerned is more or less equal. Still tax rates on LLP's inclusive of cess is 31.20%. The same may be brought down to the level of companies.

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(iii) **Tax on Dividends:** The dividend is paid by the corporates from out of taxed profits. Previously i.e., up to Assessment Year 2020-21, the dividend was exempt from tax under section 10(34) of the Act subject to Section 115BBDA which provided for taxability of dividend more than Rs. 10 lakhs. However, in such cases, the domestic company was liable to pay a Dividend Distribution Tax (DDT) under section 115-O. Now, dividend income has become taxable in the hands of taxpayers irrespective of the amount received at applicable income tax slab rates. The fact remains that a company is made of its shareholders and pays tax as a separate unit under the provisions of Income tax Act. When such taxed profit is distributed to the shareholders who have contributed to the company and because of them the company is earning and paying tax, they are also taxed on the dividend income. On the other hand, if the shareholder instead of investing in share capital, provides loan to the company, the interest earned by shareholder is taxed but the company is allowed deduction while computing the total income of the company. In that case there is no double taxation. Therefore, dividend paid by the company should not be taxed so that there is no double taxation. It is submitted that when taxed profit is distributed among the shareholders, taxing the same again is nothing but double taxation. In fact this was acknowledged in Circular No. 763 dated 18.02.1998 by the Government also. It may be noted that even in UK there is no tax on dividend.

Furthermore, Indian Residents are now investing their funds in the share market which is essential for boosting economy. The tax rates on dividend is not more than 20% on non-residents irrespective of the quantum of dividend. Therefore, the issue with regard to the taxability of the divided in the hands of the recipient may please be reconsidered in the light of double taxation on the taxed income, rate of tax of NRI and economic impact on the growth of the nation.

(iv) **Sections 148 and 148A**: The provisions of sec 148 have been replaced w.e.f. 1.4.2021. Section 148A has been inserted w.e.f. 1.4.2021. The intention behind such replacement is that unnecessarily assessment is not reopened. However, these provisions are not applied with due care and diligence and in the true spirit

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of the replacement. In fact the Hon'ble Supreme Court has also taken note of the amended provisions and observed that:

But it is seen that wherever any information is uploaded with regard to any transaction proceedings are initiated and even if evidences are laid by the assessee then even, we can say that in almost all cases the cases are reopened. There are provisions for sanction of the higher authority but higher authority also almost in all cases grants their sanction. The information uploaded in risk management portal even for verification of transaction is taken as income escaping assessment. This has resulted huge reopening of the assessment, and huge pendency of cases. Statistics may be obtained from the CBDT and it will be clear.

(v) **Huge pendency of appeals**: There is huge pendency of appeals. There is time limit provided in sec. 250(6A) for disposal of appeal is one year from the end of financial year in which such appeal is filed. However, the same has been considered to be directory and is not followed. The appeals are pending for more than 10 years. The accountability /responsibility is not fixed. This has resulted huge demand outstanding. It may please be noted that the tax payer is accountable for each and every fault and even for simple mistakes, however there is no accountability of the tax collectors. This results slackness in working. Billions of Rupees in tax demand is locked up in appeals which are not disposed of within a prescribed time. Thousands of appeals are pending with CIT(A) for more than 10 years. These are not disposed of within a specified time frame. Law should be amended to make it compulsory for the appellants to upload their submissions and evidences within a prescribe time say six months and thereafter the Appellate Authority should decide such appeals again within a prescribed time. If no decision is given on such appeals within the prescribed time, it should be presumed that the issues raised by the appellant have been accepted. The concerned authority may be made accountable for the lapse.

(vi) **Pendency of appeals before ITAT and High Courts:** More than 50000 appeals are pending before the Tribunal and similarly large number of appeals are pending before Hon'ble High Courts. Majority of appeals before ITAT and 90% of the appeals before the Hon'ble High court and Hon'ble Supreme Court are filed by the Government which involve huge costs. Almost 95% of such appeals by the department are dismissed. There is also shortage of Judges. The Government also likes that the litigations should be reduced. Even responsible

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officers do not wish to take responsibility of not filing of the appeal. Fresh circular for non- filing of appeal has been issued wherein such exceptions have been provided on the basis of which each and every decision of the CIT(A) or ITAT will be appealable. It is suggested to restrict the appeals before the ITAT and High court only in such cases where substantial question of law or a particular limit of tax is involved. Necessary amendment should be made in the law itself.

(vii) **Frequent amendments should be avoided:** Frequent amendments are made. Earlier such amendments were made by yearly Finance Act but now every now and then Notifications are also issued. The Income tax law is quite old and all types of situations have been experienced while implementing the law. However, frequent amendments as far as possible should be avoided.

(viii) **Compliances burden and responsibilities of tax payers:** In the country most of the tax payers are mediocre and are not well educated. The compliances and responsibilities of tax payers have gone up many folds. Penalties and fines are the order of the day. Forms should be prescribed in such a way that instead of filing so many returns and forms, system may be devised so that all statutory information can be uploaded in one Annual Return to be submitted within prescribed time. The prescribed schedules in GST form and Income tax Forms have no similarity resulting in mismatch. Information is passed on by GST department to Income Tax department and vice versa which results in unnecessary litigation. Therefore, matching format should be prescribed.

(ix) **Delay in allowing Appeal effects**: Appeal effects are not given timely and huge demand remains in the portal and such refunds arising out of appeal effects are not issued. The tax payer is charged interest @ 12% for delay in payment of taxes. Therefore, if appeal effect is not given and refund is not issued say within 6 months of the date of order in appeal, the Government should also pay interest @ 12 % and for lapse in issuing refunds within the prescribed time, there should be accountability.

(x) **Scope of section 10(23C)**: There are few judgments of the Hon'ble Supreme Court including in the case of Ahmedabad Urban Development Authority and New Noble Education Society that a medical institution or an educational institution cannot do any other philanthropic activity and even an educational institution cannot do medical activity and vice versa. Each should exist solely either for medical or education. This is because the word "solely" has been used in section 10(23C) under which exemption is granted. It is suggested to make

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necessary amendments by omitting the word "solely" in section 10(23C) so that an institution can engage itself in other purely philanthropic activities.

(xi) **Section 115BBE needs to be revisited**: Section 115BBE is applicable in case of addition made by the Assessing Officer under sections 68, 69, 69A to 69D. It was inserted by the Finance Act 2012 w.e.f. Asst. Year 2013-14 prescribing tax rate of 30 per cent. However, during demonetisation period the rate prescribed in section 115BBE was increased to 60 per cent and surcharge of 25 per cent was also imposed from asst year 2017-18. Over and above the same the cess of 4 per cent is added thus total burden is 78 per cent. Penalty of 10 per cent is also leviable under section 271AAC. The tax rates under section 115BBE was increased possibly with a view to create deterrence so that the taxpayers do not take advantage of 30 per cent tax as then prevailed under section 115BBE. In most of the cases the Faceless and other officers are treating the additions as addition under sections 68, 69, 69A to 69D and charging tax and surcharge at high rates prescribed u/s 115BBE. The demonetization was in 2016 and already more than 7 years have passed. Therefore, considering the immense hardship being created, the tax rate under section 115BBE should be revisited and brought back to 30 per cent and normal rate of surcharge.

Kindly consider the above suggestions and we will be obliged for the same.

Thanking You,

Yours faithfully,
For **All India Federation of Tax Practitioners**

(Narayan Prasad Jain)
President