

# PRE BUDGET MEMORANDUM-2004

## The Institute of Chartered Accountants of India

### A. INTRODUCTION

- 1.0 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2004-2005.
- 2.0 The economy is registering an impressive growth. The Government policy of giving a fillip to infrastructure has kick started the economy. As a result steel, cement, transportation and other related segments of the economy have been benefited. The financial sector is in good health and the foreign exchange reserves have crossed the 100 billion mark. A clear signal has been given that the reform process would be speeded up. The Government has taken firm decisions on the dis-investment front.
- 3.0 At the same time, one cannot lose sight of the fact that the fiscal deficit is becoming larger and larger and warning signals have been given for correcting the imbalance which, if not done with a firm hand and at the right time, may well lead to a debt trap situation in the longer run.
- 4.0 In spite of these features causing much concern, tax collections have registered a significant rise and the Institute can modestly claim that the good work done by our members both in practice and in industry in the matter of tax audit, and tax consultancy work has surely been a contributory factor in the growth of revenue.
- 5.0 Keeping in view the need for giving an immediate but sustainable fillip to the economy, we have made a number of suggestions in this memorandum classified under the following broad heads:
  - I. **Suggestions for widening the tax base and increasing the tax revenue.**
  - II. **Suggestions to check tax avoidance.**
  - III. **Suggestions for rationalisation of the provisions of direct tax laws.**
  - IV. **Suggestions relating to Indirect Taxes.**

An executive summary at the beginning gives the gist of the suggestions in a succinct manner while

the detailed suggestions follow thereafter.

We hope that as in the past, our suggestions will receive due consideration from the Government while formulating the budget proposals for the year 2004-2005.

### B. EXECUTIVE SUMMARY

#### I. SUGGESTIONS FOR WIDENING THE TAX BASE AND INCREASING THE TAX REVENUE

*(Numbers in paragraphs correspond to the numbers of detailed suggestions).*

- Persons booking international air-tickets should be required to give their PAN while booking such tickets. This is especially so when such foreign travel is organized as package tours. (1)
- Those persons who pay electricity bills amounting to more than Rs.25,000 per annum should be required to file returns. (2)
- Notified professionals should be required to file return of income. (3)
- Persons transferring immovable properties should be required to file return of income. (4)

#### II. SUGGESTIONS TO CHECK TAX AVOIDANCE

- Report from an accountant should be obtained where agricultural income reflected is the return is in excess of certain prescribed limits. (1)
- In order to verify the genuineness of the claim for exemption under the various clauses of section 10, report from an accountant containing appropriate particulars may be required in cases where the total income before applying the provisions of section 10 is in excess of the minimum sum chargeable to tax. (2)

#### III. SUGGESTIONS FOR RATIONALISATION OF THE PROVISIONS OF DIRECT-TAX LAWS

##### A. Residential status

- The earlier meaning of the term "resident but not ordinarily resident" should be restored to ensure

that the interpretation which has been given to the term 'Resident but not Ordinarily Resident' for the last 80 years prior to the above judgment of the Gujarat High Court is given effect to. (1)

**B. Incomes which do not form part of total income**

- Section 10(23) should be restored. (2)
- CBDT letter F.No.174/5/2001-ITA-I dated 23<sup>rd</sup> April, 2001 may be reviewed to give relief to the employees. Further, the provisions of section 10(10C) may be extended to employees of non-corporate entities also. (3)
- In Explanation (b) to section 10BA the word 'hand made' needs to be clarified further in order to avoid genuine difficulties. (4)
- Amendments in regard to not for profit organization in regard to their obtaining a non deduction certificate for every investment are necessary to avoid genuine difficulties. (5)

**C. Income from house property**

- Clause (c) of section 23 may be suitably amended to include both the situations covered by Explanation thereunder, viz. (i) vacancy and (ii) unrealised rent. (6)
- All taxes paid to State Governments by any name called whatsoever should be allowed as a deduction under section 23 along with property taxes paid to local authority while computing income from house property. (7)

**D. Profits and gains of business or profession**

- General depreciation rate may be increased to 33.  $\frac{1}{3}$ % (8)
- Goodwill acquired by purchase should expressly form part of block of assets and be eligible for depreciation. (9)
- The instalments for which deduction has not been allowed earlier, should be allowable in the hands of amalgamated companies, if such company amalgamates with another company. (10)
- Amendments are necessary in section 36 relating to provision for bad and doubtful debts by banking companies. (11)
- The restrictive provisions on remuneration payable to partners of a firm should be deleted and the limits prescribed in the partnership deed should be allowed to prevail. (12)

- There is a need to exempt direct payments into bank account of the payee arising out of genuine contractual obligations from the scope of section 40A(3). (13)
- Allowability of bonus paid to workmen should not be linked with the due date for filing of the return. If bonus is paid before the due date mentioned in the Bonus Act the same should not be disallowed under section 43B. (14)

**E. Capital gains**

- The reference to "damage" in section 45(1A) may be modified to ensure that any insurance claim received on damage to a capital asset repaired and used by the assessee is not covered by section 45(1A). (15)
- Some practical difficulties arising out of the definition of the term "indexed cost of acquisition" and "indexed cost of improvement" need attention. (16)
- In the event of distribution of assets on dissolution that has taken place on or after 01.04.87, as provided under section 45(4), the cost of acquisition of the asset to the partner should be the fair market value of the asset on the date of distribution to the partner. (17)
- Section 50C should be omitted in view of the various difficulties pointed out in the detailed suggestion. (18)
- Section 51 should be suitably amended so that the original cost of acquisition is indexed up to the date of receipt of advance and the reduced cost is indexed from the date of receipt of advance. (19)
- The date of option for adopting fair market value as the cost of acquisition should be advanced to 1<sup>st</sup> April, 1991. (20)

**F. Amalgamations**

- The benefit of carry forward and set off of unabsorbed capital loss should be allowed to the resulting company/amalgamated company. (21)
- The benefit under section 72A should be extended to all service sector companies as was recommended by the Government Committee appointed for the review of section 72A. (22)

**G. Carry forward and set off of losses**

- An amendment in section 43(5) dealing with speculative transaction is necessary to the effect that transaction in the nature of futures, derivatives and options are outside the purview of speculative transaction. Consequently,

Explanation to section 73 may also be deleted since it affects corporates doing genuine share business. (23)

#### H. Deductions from gross total income

- It is suggested that the order issued by the Commissioner as referred to above should be made appealable on the lines of the order issued under section 12AA. (24)
- Certain amendments relating to infrastructural facility in section 80IA(12) are called for. (25)

#### I. MAT

- Amendments may be made in section 115JB to exclude income exempt under section 80-IC from the purview of MAT. (26)
- Section 115JB should be amended to provide for exclusion of long term capital gains from the ambit of MAT to the extent it is not taxable otherwise. Further profits exempt under section 80IA/80IB and profit on sale of assets should also be excluded from the scope of MAT. (27)
- The requirements of section 115JB in relation to adjustment of depreciation or loss will cause hardship to service companies. (28)
- Tax credit in respect of MAT should be restored. (29)
- While calculating interest payable under sections 234A, 234B and 234C tax credit available to companies under section 115JAA should be taken into account. (30)
- Deduction should be allowed for total accumulated loss including depreciation, as the distinction between 'loss' and 'depreciation' does not have any rational ground. (31)

#### J. Assessment procedures - due date for filing of returns of income

- The following new due dates for filing of returns may be adopted. (32)

Category	Due date
Salaried assessees	30 <sup>th</sup> June
Non-corporate non-audit cases	31 <sup>st</sup> July
Audit cases – non-corporate assessees	31 <sup>st</sup> August
Corporate assessees	30 <sup>th</sup> September

- Special audit fee under section 142(2A) should be paid to the auditor by the Government and then the same should be recovered from the

assessee along with the taxes. (33)

- The Accounting Standards of ICAI may be notified under section 145(2) to be complied by the assessees. (34)
- For reasons explained, section 145A may be withdrawn from the statute book. (35)
- Reference to sections 10A, 10B and 80HHF should be included in the above sub-section (13) of Section 155. (36)

#### K. Block assessment

- Where a search or a requisition does not yield any facts or evidence of concealed income (or even income which had escaped assessment) for any of the six assessment years, reopening of assessment for any such assessment year should not be permitted on the basis of mere circumstance that the assessee was subjected to Search or Requisition and ignoring the fact the search or requisition had not yielded anything for that year. (37)

#### L. Deduction of tax at source

- Late payment of TDS should be subjected to penal interest as provided under section 201(IA) of the Act. This interest should be paid by way of self assessment and challan should be enclosed with the return of TDS. (38)
- A provision similar to section 139(9) providing for rectification of TDS returns should be enacted. (39)
- A proper statutory framework should be introduced to provide in the law itself for scrutiny of TDS returns, relevant time limits and also provision for refund of excess tax deducted at source. (40)
- TDS rates should be prescribed in round figures. There should be no need for recalculation by applying surcharge. (41)
- In respect of memorandum entries amendment may be made that TDS shall be deductible on such aggregate provisions only once in a year i.e. the date of end of the financial year; on the aggregate provision made during the financial year – which has not resulted in actual payment to the payee. (42)
- Time limit should be fixed for assessment of TDS returns. (43)
- Provisions of section 272B should be removed/modified. (44)

**M. Settlement Commission**

- The Settlement Commission should be empowered to waive interest payable under sections 234A, 234B and 234C in appropriate cases. (45)

**N. Penalty**

- The present discriminatory treatment in regard to penalty on charitable trusts in case of delayed filing of returns should be set right. (46)

**Wealth tax**

- Relief should be provided to assessees who have entered into joint venture agreements for demolishing and raising a new structure by stating that such assets shall be exempt if the building has not been completed as on the valuation date.

**IV. SUGGESTIONS RELATING TO INDIRECT TAXES**

**A. CENTRAL EXCISE**

- The data of contribution of indirect taxes industry-wise should be published with the budget documents and any variation of rates, exemption/withdrawals of benefits for a particular industry be explained in the budget documents. (1)
- The cumulative conditions prevailing under the Customs and the Central Excise Act in order to approach the Settlement Commission should be done away with and the pre Finance Act 2000 status regarding application to Settlement Commission should be brought into force. (2)
- The provision for levy of interest be deleted on the amount already paid or it may be clarified that interest will be charged only for the period till the amount is outstanding. (3)
- The rate of interest payable on refund of central excise duty be brought in line with the rate of interest applicable in case of recovery of central excise duty. (4)

**B. SERVICE TAX**

- There should be separate “place of supply” rules for each service to determine the place of supply and the territorial jurisdiction for taxation. Separate supply rules may be drafted qua each type of service. (1.1)
- It would be advisable to have a separate enactment for service tax instead of incorporating the provisions in Chapter V of the Finance Act, 1994 and also making certain sections of the Central Excise Act applicable to service tax. (1.2)
- A standard rate of abatement may be given in

respect of maintenance and repair services. Credit also may be given for the excise duty paid on the parts/accessories. (1.3)

- A minimum threshold limit should be provided for registration. (1.4)
- The Act or Rules should provide that no service tax will be payable on reimbursement of out of pocket expenses subject to production of documentary evidence substantiating the claim. (1.5)
- It should be clarified that the commissioning and installation should either be liable for excise duty or service tax at the option of the assessee. (1.6)
- The condition that the payable received in foreign exchange must not be repatriated outside India should be deleted in order to avoid denial of exemption to many assessees and also to avoid litigation. (1.7)
- It would be advisable to delineate the provisions governing levy and collection of service tax where the availer of the service is liable to pay service tax from the normal provisions where the service provider is the person liable to pay service tax. Hence there should be separate provisions for payment of service tax and filing service tax returns by an availer of services. (2.1)
- There is a need for provision for revising the returns. (2.2)
- Section 71 needs a re-look as given in the detailed suggestion. (2.3)
- The Act must provide a right to the assessee to apply for revision of mistakes even after the assessment is over. (2.4)
- The unit of verification/assessment should be a year. (2.5)
- Penalty under section 76 for failure to pay tax should be deleted. (2.6)
- Section 80 of the Act to be amended to provide for condonation of penalty under section 75A in case the assessee shows reasonable cause. (2.7)
- Section 84 dealing with powers of revision needs drafting change. (2.8)
- It is advisable to incorporate the provisions of the Customs Act directly in the law governing service tax. (2.9)
- The advance ruling should not be restricted to only three situations but should be extended to all categories of transactions with non-residents. (2.10)
- Suggestions for appropriate changes in rules may be effected. (3.1 to 3.7 and 4.1 to 4.7)
- Some clarifications are required. (5.1 to 5.2)