POST BUDGET MEMORANDUM 2016

Direct Taxes and International Tax

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

POST-BUDGET MEMORANDUM - 2016

DIRECT TAXES
AND
INTERNATIONAL TAX

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A. INTRODUCTION

1.0 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Post-Budget Memorandum to the Government.

1.1 In this memorandum, we have suggested certain amendments to the proposals contained in the Finance Bill, 2016 which would help the Government to achieve the desired objectives.

1.2 We have noted with great satisfaction that the suggestions given by the Committee in the past have been considered very positively. In formulating our suggestions in regard to the Finance Bill 2016, the Direct Taxes Committee of the ICAI has considered in a balanced way, the objectives and rationale of the Government and the practical difficulties/hardships faced by taxpayers and professionals in application of the provisions of the Income-tax Act, 1961. We are confident that the suggestions of the Direct Taxes Committee of ICAI given in this Memorandum shall receive positive consideration.

1.3 In this memorandum, firstly an executive summary of our suggestions on the specific clauses of the Finance Bill, 2016 relating to income-tax have been given. The detailed suggestions are given thereafter.

1.4 In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same.

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B. Executive Summary

S. No.		Clause No	Section	Particulars	Suggestions	Page No
1.		-	-	Paragraph E of Part III to the First Schedule – – Proposed reduction of 1% in rate of taxation in case of company assessees with total turnover/gross receipts of upto Rs. 5 crore – Reduction in rate may be made applicable to Firms/ Limited Liability Partnerships also	It is suggested that the benefit of reduction of rate of tax to 29% of total income for small domestic companies may also be extended to firms and Limited Liability Partnerships as well since most of the deductions and exemptions phased out as proposed by sunset clause of Finance Bill, 2016 are applicable to both companies as well as firms/LLPs and so as to provide a level playing field amongst these forms of business. Further, the limit of Rs 5 crore for determining the eligibility to avail the reduced rate may be with reference to P.Y.2015-16, being the previous year immediately preceding the current previous year, namely, P.Y.2016-17, relevant to A.Y.2017-18.	28
2.		-	-	No provision in the Finance Bill, 2016 to give effect to the proposal contained in para 127 of Hon'ble Finance Minister speech to reduce the period of holding for availing benefit of long-term capital gains in case of unlisted companies from three to two years	Appropriate provision to reduce the period of holding from three to two years for availing benefit of long-term capital gains in case of unlisted companies may be incorporated in line with the proposal contained in the Budget Speech.	29

S. No.		Clause No	Section	Particulars	Suggestions	Page No
3.		7(a)(ii)	10(12A)	Proposed 40% exemption for withdrawal from National Pension System (NPS) by any employee – Benefit to be extended to withdrawals by any person and not employees alone.	It is suggested that the proposed clause (12A) of section 10 providing for exemption of 40% of payment from the NPS Trust to "an employee" on closure of account or opting out of pension scheme, may be modified to allow such exemption to payment from the NPS Trust to "an individual", since exemption under the said clause is available in respect of withdrawals from NPS by self-employed individuals also. In effect, the substitution of the words "an employee" in the said clause by "an individual" would help to bring within its fold, exemption to self-employed individuals as well.	29
4.			14A	Para 167 of Finance Minister's speech – Amendment in Rule 8D proposed – Further amendment required in section 14A so that the said section is not made applicable to dividend income exempt under section 10(34) since the same has been subject to dividend distribution tax in the hands of the company	It is suggested that the provisions of section 14A may not be made applicable to dividend income exempt under section 10(34) since it has already suffered an economic tax in the form of dividend distribution tax. Likewise, section 14A may not be made applicable to any other income which has been subject to economic tax like dividend.	30
5.		15	35	Weighted Deduction for contribution to Scientific Research	Scientific research is the lifeline of business in all countries of the	31

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				and expenditure on scientific research to be phased out – Weighted deductions to be continued for providing impetus to scientific research and development in India	world. Like make in India, ease of doing business and encouragement to start up initiatives of the government, innovation & scientific research initiative should be given equal weightage. Withdrawal of weighted deduction in respect of scientific research expenditure will be a retrograde step. Therefore, it is suggested that weighted deductions to various modes of Scientific Research expenditure allowed at present to be continued.	
6.		17	35AC	Deduction in respect of Expenditure on Eligible Projects to be withdrawn – Deduction to continue to provide impetus to rural sector and weaker sections of the economy	The expenditure incurred on eligible projects or schemes are for the development of the backward and weaker sections thereby focusing on development of rural areas. Further, all the projects are approved by the National Committee which is set up by the Central Government to ensure that the funds are utilized for the said purpose. Therefore, this deduction which is serving the purpose for which it was	32

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					enacted so well, should be continued to be allowed.	
7.		25,26	44AB	Consequential amendments due to amendment proposed in section 44AD - Clarification for assessees with gross receipts exceeding one crore rupees but less than two crore rupees regarding maintenance of books of account	It is therefore suggested that clause (a) of section 44AB be appropriately modified to increase the threshold limit specified thereunder from rupees one crore to rupees two crore, so as to avoid any ambiguity in interpreting the true intent of law regarding maintenance of books of account and audit of the same where the total turnover, gross receipts exceed rupees one crore but does not exceed rupees two crore.	33
8.		26	44AD	Proposed deletion of proviso to sub-section (2) providing for deduction of interest and remuneration paid to partners by firm from the presumptive income under section 44AD – Proviso to remain to avoid genuine hardship to small and medium firms	For facilitating ease of doing business by small firms and removing the genuine hardship of having to pay higher taxes on their presumptive income on account of the proposed denial of deduction in respect of remuneration paid to partners within the limits set out in section 40(b), the proviso to section to 44AD(2) may be retained. Similarly, separate deduction may be allowed for professional firms as well in respect of remuneration paid to partners under the proposed new section 44ADA.	33
9.		27	44ADA	Proposed section 44ADA providing for		34

S. No.		Clause No	Section	Particulars	Suggestions	Page No
				special provision for computing profits and gains of profession on presumptive basis – Issues and concerns arising therefrom to be addressed		
	9.1	27	44ADA	Threshold limit of Rs 50 lakhs may be increased	It is suggested that the threshold limit of Rs 50 lakh may be raised appropriately so that a sizable percentage of professionals in the small and medium segment are covered under the said provisions; which would ultimately lead to the achievement of stated objective of introducing the new provision.	35
	9.2	27	44ADA	Rate of estimated tax @ 50% too high	It is suggested that the estimated rate of income @ 50% of the total gross receipts may be reduced appropriately considering the high cost of providing the services by specified professionals specially the small tax payers having income from profession.	35
10.		28	47(xiiib)	Conversion of company into LLP – Clarification required relating to additional condition	1. The condition of asset base being less than Rs. 5 crores may be rationalised. 2. Provision may apply prospectively to conversion proposals initiated on or after 1 April 2016. 3. Also, the scope of the term 'value of total assets as appearing in the books of accounts'	36

S. No.		Clause No	Section	Particulars	Suggestions	Page No
					be clarified to provide certainty and reduce litigation .	
11.		30	50C	Option for adopting stamp duty value on date of agreement – Amendment to be treated as clarificatory in nature	The amendment may be treated as clarificatory in nature. Alternatively, a circular may be issued to achieve the same result in pending assessments or appeals.	37
12.		40	80-IAB	Phasing out of incentive where development of SEZ begins on or after 1st April, 2017 - Phasing out to be in respect of SEZs notified on or after 1st April, 2017	Since the qualifying period of deduction starts from year of notification of SEZ, the phase out may also be with respect to SEZs notified on or after 1 April 2017 instead of currently proposed phase out with respect to commencement of development on or after 1 April 2017.	37
13.		42	80-IB	Phasing out of incentive under section 80-IB in respect of production of mineral oil and natural gas, if the specified activity commences on or after 1.4.2017 - Phasing out may be with reference to acquisition of new blocks and commencing discovery process in respect of a block already acquired	The sunset clause may be with reference to acquisition of new blocks and for commencing discovery process in the block already acquired. The sunset clause may not be made applicable for commencing commercial production of mineral oil or natural gas in the eligible blocks in which discovery has already commenced before 1 April, 2017.	38
14.		41,49	80-IAC, 115BA	Special incentives to start-ups – Issues to be addressed		39
	14.1	41,49	80-IAC, 115BA	Definition of "eligible start-up" to include Partnership Firm and Limited Liability	Clause (ii) of Explanation to proposed section 80IAC be amended to	39

S. No.		Clause No	Section	Particulars	Suggestions	Page No
				Partnership	define "eligible start-up" in line with the Start-up scheme where, the term entity includes Private Limited Company (under The Companies Act, 2013) or a Registered Partnership Firm (under The Indian Partnership Act, 1932) or Limited Liability Partnership (under The Limited Liability Partnership Act, 2008) so as to provide ease of running of business to startup firms and LLP also.	
	14.2	41,49	80-IAC, 115BA	Benefit of 100% deduction from the year in which the eligible start-up commences its business	It is suggested that sub-section (2) of proposed section 80IAC be appropriately amended to give the benefit of 100% deduction from the year in which the eligible start-up commences its business as against "year of incorporation" to avoid creation of paper/shell companies.	40
	14.3	41,49	80-IAC, 115BA	Profit linked holiday for start-ups	I. In order to encourage start-ups, it is recommended that no turnover limit be prescribed. II. Alternatively, instead of profit linked deduction, start-ups may also be provided concessions in other aspects, illustratively, longer period for carry forward of loss, removing restriction	41

S. No.		Clause No	Section	Particulars	Suggestions	Page No
					under section 79, annual advance tax, annual compliance of TDS statements, etc.	
15.		43	80-IBA	Tax holiday to housing projects – Issues to be addressed	It is suggested that: (a) The definition of built-up area in clause (a) to sub-section (6) be linked to clause (e) of sub-section (2) which specifies maximum size of residential unit; (b) The words "and interior door" in the definition of "residential unit" be replaced with "an interior door" to convey the real intent (c) The period within which project has to be completed may be extended from three years to five years from the date of approval by the competent authority.	41
16.		48	112(1)(c)	Long-term capital gains on shares of a company, not being a company in which public are substantially interested, to be eligible for concessional rate of tax@10% - Amendment to be made effective retrospectively	The following alternative modes have been suggested: a) The amendment should be made retrospective from April 1, 2013; or b) A clarificatory circular may be issued by the Central Board of Direct Taxes clarifying that since the amendment is only clarificatory in nature it will take effect from April 1, 2013; or	43

S. No.		Clause No	Section	Particulars	Suggestions	Page No
					c) An Explanation may be added after the said clause clarifying that for the purposes of this clause unlisted securities shall include shares of a company not being a company in which the public are substantially interested.	
17.		50	115BBDA	Dividend received by resident individuals, HUFs and firms receiving dividend in excess of Rs.10 lakh to be subject to tax @ 10% in their hands – Issues to be addressed		44
	17.1	50	115BBDA	Clarification required in respect of amount of dividend sought to be taxed under this section	It is suggested that section 115BBDA be amended to reflect the true legislative intent stated in the Explanatory Memorandum. The amendment may be effected in the following manner by adding the words **"received in excess of Rs.10 lakh"** in clause (a) of sub-section (1) after the words "income by way of such dividends" and before the words "at the rate of ten per cent"	44
	17.2	50	115BBDA	Consequence of the new levy- Triple taxation	It is recommended that new levy amounting to third level taxation on profits may be done away with. Alternatively, the earlier system of	45

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					taxation of dividend, prior to 1997, namely, tax in the hands of the shareholder can be re-introduced and levy of Dividend Distribution Tax in the hands of the company may be removed.	
18.		52	115BBF	Concessional rate of tax @ 10% on income from patent – Issues to be addressed		45
	18.1	52	115BBF	Benefit may be extended to other intellectual property rights	It is suggested that the benefit of concessional rate of tax @ 10% of income by way of royalty in respect of a patent developed and registered in India be also extended to other intellectual property rights like know-how, copyright, trade-mark etc.	46
	18.2	52	115BBF	Benefit restricted to 'true and first inventor of the invention': Benefit may be extended to assignee of the true and first inventor in respect of the right to make an application for a patent	It is recommended that the condition of joint patentee also being 'true and first inventor' be omitted. If the intent is to allow benefit only to first person to register patent, the phrase 'being the true and first inventor of the invention' used in context of joint person may be substituted with the phrase 'being the assignee of the true and first inventor in respect of the right to make an application for a patent'.	46
	18.3	52	115BBF	Benefit may be extended to capital gains arising on sale of patented products	It is recommended that, in line with BEPS Action 5, in addition to royalty income, this concessional regime	47

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					should be extended to income on sale of patented products also.	
	18.4	52	115BBF	Extension of benefit to royalty income earned from inventions for which patents are applied under Patents Act 1970 but registration is awaited	It is recommended that the concessional tax regime be extended to royalty income earned from patents which are applied for and awaiting registration as well.	48
	18.5	52	115BBF	Other Issues which need to be addressed	To make the regime truly meaningful and comparable to the regimes which exist in other jurisdictions, its scope will need to be extended to cover or clarify the following: a. Clarify that condition of developed and registered in India is fulfilled once the qualifying taxpayer gets the patent developed under his control and direction while some part of expenditure may be incurred outside India or some part of R&D activity (say, not more than a certain percentage, like 20%) may be outsourced to any other agency which works as per the direction and control of the taxpayer. b. Clarify that consideration received for settling infringement disputes is also an alternative form of royalty which qualifies for the	48

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					benefit. c. To provide an option to the taxpayer to opt out of the regime if the expenditure and allowances admissible in computation of royalty income is likely to result in net taxation below the regime prescribed rate. d. Since almost all comparable jurisdictions extend benefit to non-resident permanent establishment which develops IP under the circumstances comparable to those under which IP is developed by the resident. The benefit may be extended to non-resident having permanent establishment in India. e. In case of a business reorganisation in the form of merger, demerger etc., the successor entity and in case of death of the patent owner, its legal heir/inheritor of the patent may be considered as eligible to claim the benefit provided such successor/legal heir satisfies the condition of being a resident of India.	
19.		56	115QA	Rules to be prescribed	a. It is suggested	49

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				for determining the amount received by the company for issue of shares – Rules to be applicable for buy-back effected on or after 01.06.2016	that a cut-off date for applicability of rules may be prescribed. It is recommended that it should be explicitly provided that the rules, once notified, shall be applicable only for computing consideration received on issue of shares in respect of buy back which takes place on or after 1 June 2016. b. Further, necessary provision should be incorporated so that the cost paid for intermediate transfers between the shareholders post issue of share by the company is reduced for the purpose of calculating the buy-back tax.	
20.		59	115TCA	Tax on income from Securitisation Trust – Tax Treatment in respect of distributions in April and May 2016 to be clarified	The new regime should be made applicable for distributions on or after 1 June 2016.	50
21.		60	115TD, 115TF	Special provisions relating to tax on accreted income of certain trusts and institutions – Issues to be addressed	a. The provisions of Chapter XII-EB be appropriately aligned with the intent expressed in the Explanatory Memorandum i.e., to levy exit tax only in case of voluntary wind-up of activities or dissolution or merger with charitable/non-charitable institutions or conversion of charitable institution into non-charitable	50

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					institution. b. Without prejudice to generality of the above suggestion, it is suggested that, in case of cancellation of registration under section 12AA, the payment of tax should be stipulated within fourteen days from the disposal of the appeal, if any filed against the cancellation order. c. The amount on which tax has been levied in an earlier year due to non-compliance of the provisions of section 11 to 13 should not be included once again while computing accreted income for levy of exit tax, since the same would result in double taxation.	
22.		65	139(4)/(5)	Time limit for filing belated return reduced and enabling provisions for revising belated return introduced - Reference to return in response to section 142(1) to be included in Sections 139(4) and 139(5)	It is suggested that: (i) Reference to sub-section (1) of section 142 may be reinstated in new section 139(4) i.e., enabling provision to be made for filing of belated return in response to notice under section 142(1). (ii) Section 139(5) may be amended to provide for revision of return filed in response to notice under section 142(1), in line with the intent expressed in the	52

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					Explanatory Memorandum.	
23.		66	143(1)	Increase in scope of "Incorrect claim apparent from any information in the return" – New sub-clause (iv) to be redrafted to include specific reference to report under section 44AB	It is suggested that sub-clause (iv) may be appropriately reworded to disallow expenditure indicated in the report of audit to be furnished under section 44AB but not taken into account in computing total income in the return.	53
24.		81	194LBB	Tax to be deducted at rates in force where the payee is a non-resident - Relief from tax withholding obligation of AIF in respect of distribution of exempt income may be provided	Appropriate amendment may be made to exclude distribution of exempt income from scope of section 194LBB.	54
25.		86	206C	TCS on sale of motor vehicles of value above Rs. 10 lakhs- Enabling provision for filing of declaration by buyer for non-applicability of TCS in case of use of motor vehicle for own transportation business may be inserted.	It is suggested to introduce an enabling provision for filing of declaration by buyer for non-applicability of TCS in case of use of motor vehicle for own transportation business. To safeguard the interests of Revenue, such facility may be provided only if buyer furnishes his PAN.	54
26.		87,89	211,234C	Advance tax to be paid in one instalment on or before 15th March by assessees opting for presumptive taxation under section 44AD- Similar benefit may be extended to assessees opting for section 44ADA	It is suggested that section 211(1) be suitably amended so as to include section 44ADA within its ambit in the manner similar to section 44AD as proposed in sub-section (1)(b) in the Finance Bill, 2016. Further, consequential amendment may also be made in section	55

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					234C in line with amendment proposed in clause (b) of sub-section (1) regarding assessees opting for section 44AD.	
27.		88	220(2A)	Time limit for disposing waiver applications provided - Consequence of not passing the order within the time limit to be spelt out	The time limit may be redundant unless there is a specific provision for consequences in case of failure to pass the waiver order within prescribed time limit. Hence, it may be provided that, if the Principal Commissioner/ Commissioner fails to pass the order within the time limit, interest, penalty etc. should be deemed to be waived.	56
28.		96	270A	New section 270A to be inserted to provide for levy of penalty in case of under reporting income and misreporting of income- Issues to be addressed		56
	28.1	96	270A	Penalty order under section 270A be made an order appealable before Commissioner (Appeals)under section 246A	It is suggested that section 246A may be suitably amended so as to provide that penalty order under section 270A passed by Assessing Officer below the rank of Commissioner may be made appealable under section 246A before Commissioner (Appeals).	56
	28.2	96	270A	Insertion of reference to section 270A(8) under section 273AA	It is suggested that section 273A may be amended to include reference to Section 270A (8) i.e., mis-reporting of income	57

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					under its purview.	
	28.3	96	270A	Penalty for under-reporting of income	Without prejudice thereto, with regard to the newly introduced methodology of levying penalty, the following suggestions may be considered. • By way of express requirement, the Assessing Officer may be required to initiate the proceedings prior to or concurrently with the closure of assessment proceedings. Unless this is done, there may be initiation of penalty several years after the assessment proceedings are completed. The time limit under section 275(c) is, unfortunately, linked with the date of initiation of proceedings. • Unlike Explanation 3 of section 271(1)(c), in the proposed provision, where return of income is not furnished, penalty will be calculated with reference to tax on income assessed without considering the impact of tax deducted or advance tax paid by taxpayer. For example, in case of a person who is not required to furnish return of income under section 115A(5), tax may have been	58

S. No.		Clause No	Section	Particulars	Suggestions	Page No
					paid, but, as per new methodology, the whole of the income, as assessed, may be considered as unreported income. Such would also be the case in a situation where there is no revenue loss since the whole of the tax was already paid up and yet, the return may not have been furnished. • There may be some concern on resolution of the formula specified in the section if, intimation under section 143(1)(a) is not available. It may be good to clarify that, in such a case, returned income will be the substituted basis. • If immunity is granted u/s. 270A, the immunity holds valid against initiation of prosecution u/s. 276C. The reference may also be made to section 276CC which can be invoked in a case where there is failure to furnish return of income. • As per proposed section 270A(10), the tax payable on under-reported income shall be amount of tax calculated (a) in the case of company, firm or local authority, on under-reported income	

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					as if the under-reported income were the total income and (b) in case of any other assessee, at the rate of 30% on under-reported income. This provides iniquitous results when under-reporting is of income chargeable at lower rate (say, long term capital gains). In case of company, firm or local authority, the penalty shall be computed @ 20% of under-reported LTCG whereas in case of other taxpayers, the penalty shall be computed @ 30% of under-reported LTCG. Further, benefit of slab rate shall also not be available to individual/HUF taxpayers. Hence, to ensure parity between company/firm / local authority and other taxpayers, it is recommended that the tax should be computed on slab rate and/or lower rates as applicable to nature of under-reported income.	
	28.4	96	270A	Order to specify the specific clause of under-reported or misreported income for levy of penalty under section 270A	It is suggested that suitable amendments be introduced or alternatively administrative instructions may be issued so that each order contains the specific fact of either misreported income or	59

S. No.		Clause No	Section	Particulars	Suggestions	Page No
					under-reported income or both along with the mention of specific clause of section 270A(2)/(9) against each disallowance/addition. Such measures would act as a suitable control mechanism in the absence of recording of satisfaction to initiate penalty proceedings and would also enable assessee to opt for proposed section 270AA providing for immunity from penalty and prosecution in case income is not misreported.	
	28.5	96	270A	Clarification when tax increases due to re-characterisation of income under a different head of income but assessed income equals the returned income	It is suggested that suitable clarification may be issued regarding the situation when tax amount is increased due to rate increase (on account of, say, change of head of income from long term capital gain income to profits and gains of business or profession or income from other sources) although the returned income and assessed income are exactly same.	60
	28.6	96	270A	Mere making of a claim which is not sustainable in law would not tantamount to furnishing inaccurate particulars for attracting levy of penalty	It is suggested that proposed section 270A may be suitably amended so that penalty is not automatically attracted for merely making of a claim which is not sustainable in law.	61
29.		108	281B	Provisional	Need for clarification	61

S. No.		Clause No	Section	Particulars	Suggestions	Page No
				attachment of property- Treatment of amount realized by invoking bank guarantee- Clarification required	regarding reasons for depositing the amount in the personal deposit account of authority and not to refund the same to the taxpayer.	
30.		193	Chapter IX	The Income Declaration Scheme, 2016- Issues to be addressed		62
	30.1	193	Chapter IX	Clarity on definition of the term 'declarant' [Clause 179(a) of the Finance Bill, 2016]	It is recommended to clarify whether non-residents who fulfil the other stated conditions in clause 180(1) are also allowed to avail opportunity under the scheme.	62
	30.2	193	Chapter IX	Impact of receipt of notice, which bears no reference to the undisclosed income sought to be declared, on availment of this scheme	As per the proposed scheme, the declaration cannot be made by a person who has received a notice under section 142 or 143(2) or 148, etc. It is possible that the notice bears no reference to the undisclosed income which is sought to be declared. It may be considered whether eligibility should be extended to a case where the declared income does not bear any nexus with the notice.	62
	30.3	193	Chapter IX	Immunity from other Acts	Immunity may be granted under other laws, such as SEBI, IPC etc.	63
	30.4	193	Chapter IX	No scrutiny or enquiry in relation to declarations filed by the taxpayer	It is recommended that suitable clarification be made in the scheme itself to avoid any ambiguity.	63
	30.5	193	Chapter IX	Non-applicability of scheme in cases where notice under section	Under clause 193(e)(i), notice issued under section 142 or sub-	63

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				142 or section 143(2) is issued	section (2) of section 143 may be deleted as no prior satisfaction is recorded and mere issue of notice cannot be taken as non-declaration of income as held by judicial fora in the past.	
31.		198	Chapter X	The Direct Tax Dispute Resolution scheme(DRS), 2016 - Issues to be addressed		65
	31.1	199	Chapter X	Clarification in case where appeal is pending as on 29th February, 2016 but decided/adjudicated upon before the date of filing of declaration	Clarification is needed with regard to the availment of the Direct Tax Dispute Resolution Scheme, 2016 in cases where appeal is pending as on 29th February, 2016 but decided/adjudicated upon before the date of filing of declaration under the said scheme by the assessee.	65
	31.2	199	Chapter X	Declaration of tax payable	The provision for levy of 25% penalty in case where disputed tax is more than rupees ten lakh should be dropped from clause 199 of the Bill.	66
	31.3	199	Chapter X	Benefit of this scheme should not be restricted to CIT(A)	The proposed scheme should cover appellate forums [Commissioner (Appeals), Tribunal, HC, SC], either at the instance of taxpayer or at the behest of tax authority. If this provision is extended to all such appeals, pending litigation before all such judicial authorities will get reduced.	67
	31.4	199	Chapter X	Clarification is required with regard	Clarification is needed with regard to this	67

S. No.		Clause No	Section	Particulars	Suggestions	Page No
				to applicability of this scheme in all retrospective cases	scheme's applicability in all retrospective cases pending before any authority	
	31.5	199	Chapter X	Issues pertaining to 'Tax Arrears' and 'Specified Tax' and issue to common to 'Tax Arrears' and 'Specified Tax'.	In order to encourage taxpayers to avail DRS, there is a need for clarity in respect of certain issues which have been dealt with in some detail in this memorandum.	68
32.				Income Computation and Disclosure Standards (ICDSs)- Need for postponement of date of application	It is suggested that applicability of ICDS be postponed until the concerns of taxpayers are suitably addressed.	71
Suggestions On International Taxation						
33.		53	115JB	Applicability of Minimum Alternate Tax (MAT) on foreign companies – Benefit may be extended to foreign companies having permanent establishment and covered under the presumptive tax regime in India	It is suggested that: (a) a suitable amendment may be made providing that foreign companies having permanent establishment in India and covered under the presumptive tax regime may be kept outside the purview of MAT. (b) in order to avoid any controversy, it may be clarified that in case of foreign companies having PE / Place of Business in India, the computation of book profits should be based on India profits and not global profits.	74
34.		85	206AA	Exemption from requirement of furnishing PAN under section 206AA to certain non-residents – Request to treat the amendment as	It is suggested that this amendment be treated as clarificatory.	75

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				clarificatory		
35.				New Chapter VIII of the Finance Bill, 2016 - Equalisation Levy- Issues to be addressed	The proposal to introduce levy in the present form may be reconsidered. Particularly, after 1 April 2017, GAAR will ensure that artificial avoidance of taxable presence is not likely to remain tax protected for the non-residents.	75
36.				Country By Country – Transfer Pricing: Deferral of application for facilitating better understanding and implementation	It is suggested that the applicability of the said provisions be postponed by one year.	76

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C. Detailed Suggestions

1. Paragraph E of Part III to the First Schedule — Proposed reduction of 1% in rate of taxation in case of company assessees with total turnover/gross receipts of upto Rs. 5 crore – Reduction in rate may be made applicable to Firms/ Limited Liability Partnerships also

The Finance Bill, 2016 has proposed a tax rate of 29% of total income to (domestic) company assessees provided its total turnover or the gross receipts in the previous year 2014-15 does not exceed five crore rupees. This proposed reduction in corporate tax rate is a step in the direction of implementing the proposal in Finance Minister's Budget Speech during the Union Budget 2014-15 on 10th July, 2014 wherein he had indicated reduction in rate of corporate tax along with gradual phasing out of deductions & exemptions.

It may be noted that the rate of tax applicable to firms including limited liability partnerships is 30%. Most of the deductions and exemptions where phasing out has been proposed by provision of sunset clause as per the Finance Bill, 2016 are applicable to both companies as well as firms/LLPs. Therefore, the benefit of reduction of 1% in rate of tax may be passed on to such assessees as well. Further, if the proposed rate of 29% is also made applicable to firms and LLPs, it would facilitate ease of doing business in any form and not particularly restrict such facility to the small corporates.

Further, it may be noted that firms and LLPs are also incorporated under a statute and are subject to certain compliance requirements as provided in the Partnership Act, 1932 and Limited Liability Partnership Act, 2008, respectively.

It is also suggested that the prescribed turnover of Rs 5 crore may be considered for previous year 2015-16, being the previous year immediately preceding the P.Y.2016-17, relevant to A.Y.2017-18.

Suggestion

It is suggested that the benefit of reduction of rate of tax to 29% of total income for small domestic companies may also be

extended to firms and Limited Liability Partnerships as well since most of the deductions and exemptions phased out as proposed by sunset clause of Finance Bill, 2016 are applicable to both companies as well as firms/LLPs and so as to provide a level playing field amongst these forms of business.

Further, the limit of Rs 5 crore for determining the eligibility to avail the reduced rate may be with reference to P.Y.2015-16, being the previous year immediately preceding the current previous year, namely, P.Y.2016-17, relevant to A.Y.2017-18.

2. No provision in the Finance Bill, 2016 to give effect to the proposal contained in para 127 of Hon'ble Finance Minister speech to reduce the period of holding for availing benefit of long-term capital gains in case of unlisted companies from three to two years

The Honorable Finance Minister, in para 127 of his Budget Speech [Union Budget 2016-17] proposed that the period for getting benefit of long term capital gain regime in case of unlisted companies is proposed to be reduced from three to two years.

However, there is no proposal in the Finance Bill, 2016 to give effect to the reduction in the period of holding. This appears to be only an inadvertent omission. An appropriate provision may be incorporated to give effect to the said proposal before passing the Finance Bill, 2016.

Suggestion

Appropriate provision to reduce the period of holding from three to two years for availing benefit of long-term capital gains in case of unlisted companies may be incorporated in line with the proposal contained in the Budget Speech.

3. Clause 7(a)(ii) – New clause (12A) of section 10 – Proposed 40% exemption for withdrawal from National Pension System (NPS) by any employee – Benefit to be extended to withdrawals by any person and not employees alone

The Finance Bill, 2016 has proposed to insert new clause (12A) in section 10 which provides that any payment from National Pension System (NPS) Trust ***to an employee*** on account of closure or his

opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed forty percent of the total amount payable to him at the time of closure or his opting out of the scheme, shall be exempt from tax. This is a very welcome proposal. In this context, it is noteworthy that contribution to NPS can be made by self-employed tax payers too. It is not restricted only to salaried employees. However, the new clause providing for exemption refers to withdrawals from NPS ***by an employee only***. Therefore, the language of the proposed clause may be amended to provide for exemption in respect of withdrawals from NPS by an individual, who may be a salaried employee or a self-employed person.

Suggestion

It is suggested that the proposed clause (12A) of section 10 providing for exemption of 40% of payment from the NPS Trust to ***"an employee"*** *on closure of account or opting out of pension scheme, may be modified to allow such exemption to payment from the NPS Trust to* ***"an individual"****, since exemption under the said clause is available in respect of withdrawals from NPS by self-employed individuals also.*

In effect, the substitution of the words "an employee" in the said clause by "an individual" would help to bring within its fold, exemption to self-employed individuals as well.

4. Para 167 of Finance Minister's speech – Section 14A – Amendment in Rule 8D proposed – Further amendment required in section 14A so that the said section is not made applicable to dividend income exempt under section 10(34) since the same has been subject to dividend distribution tax in the hands of the company

An important issue on section 14A which needs to be addressed, is the applicability of the said section to dividend income which is exempt under section 10(34). The said issue is also raised in the Report of the Income Tax Simplification Committee headed by Justice R V Easwar where it is acknowledged that dividend under the prevailing scheme suffers economic taxation on account of levy of DDT on the company.

The report clearly conveys that the dividend income which suffers economic taxation in the form dividend distribution tax should be kept out of the purview of section 14A.

Suggestion

It is suggested that the provisions of section 14A may not be made applicable to dividend income exempt under section 10(34) since it has already suffered an economic tax in the form of dividend distribution tax. Likewise, section 14A may not be made applicable to any other income which has been subject to economic tax like dividend. The said change may be brought by insertion of a suitable proviso in this regard.

5. Clause 15 – Section 35 – Weighted Deduction for contribution to Scientific Research and expenditure on scientific research to be phased out – Weighted deductions to be continued for providing impetus to scientific research and development in India

In respect of contribution to approved scientific research association, approved university, college or other institution, contribution to an approved scientific research company, contribution to an approved research association or university or college or other institution to be used for research in social science or statistical research, any sum paid to a National Laboratory or a specified person for the purpose of approved scientific research programme, expenditure incurred by a company, engaged in the business of Bio-technology or in the business of manufacture or production of any article or things on in-house research and development facility as specified in the above section, weighted deduction ranging from 125% to 200% is allowed.

It is proposed in the Bill that in cases where the weighted deduction is currently more than 150%, the same is proposed to be reduced to 150% with effect from P.Y.2017-18 and 100% with effect from P.Y.2020-21. Further, in cases where the weighted deduction is less than 150%, it is proposed to be reduced to 100% from P.Y.2017-18.

Suggestion

Scientific research is the lifeline of business in all countries of the world. Indian residents are paying huge sums by way of technical services, fees to foreign technicians to upgrade their

products and give the customers what latest technology gives globally. Like make in India, ease of doing business and encouragement to start up initiatives of the government, innovation & scientific research initiative should be given equal weightage.

If In-house research is encouraged, outgo on account of FTS will reduce and this will help indigenous businesses to grow. Withdrawal of weighted deduction in respect of scientific research expenditure will be a retrograde step.

Therefore, it is suggested that weighted deductions to various modes of Scientific Research expenditure allowed at present to be continued.

6. Clause 17 - Section 35AC- Deduction in respect of Expenditure on Eligible Projects to be withdrawn – Deduction to continue to provide impetus to rural sector and weaker sections of the economy

Any expenditure incurred on any project or scheme for promoting the social and economic welfare of the society or for the upliftment of the public, shall be allowed 100% deduction on such expenditure. Rule 11K of the Income-tax Rules, 1962 provides the list of projects which are eligible for deduction under section 35AC of the Act.

The projects as mentioned in Rule 11K are for the development of the economically and socially weaker section of the society.

It is proposed in the Bill that no deduction shall be available on any expenditure incurred on certain eligible social development project or scheme from AY 2018-19 and onwards.

Corporates contribute huge sums for this cause under the CSR schemes. The whole initiative for the rural development and the upliftment of the poor may take a backseat, if no deduction is allowable in computing the income.

Suggestion

The expenditure incurred on eligible projects or schemes are for the development of the backward and weaker sections thereby focusing on development of rural areas.

Further, all the projects are approved by the National Committee which is set up by the Central Government to ensure that the funds are utilized for the said purpose.

Therefore, this deduction which is serving the purpose for which it was enacted so well, should be continued to be allowed.

7. Clause 25 and 26 – Section 44AB – Consequential amendments due to amendment proposed in section 44AD - Clarification for assessees with gross receipts exceeding one crore rupees but less than two crore rupees regarding maintenance of books of account

The Finance Bill, 2016 has proposed an amendment to section 44AD, by increasing the threshold limit there under from "one crore rupees" to "two crore rupees", thereby providing relaxation from the requirement of maintaining books of accounts for eligible businesses with total turnover or gross receipts in the previous year not exceeding an amount of two crore rupees.

Correspondingly, clause (a) of section 44AB requires every person carrying on business to get his accounts of such previous year audited by an accountant if his total sales, turnover or gross receipts as the case may be in business exceed or exceeds one crore rupees. There is no amendment proposed in the said clause (a) of section 44AB. Resultantly, there appears to be some inconsistency between the provisions of section 44AD.

Suggestion

It is therefore suggested that clause (a) of section 44AB be appropriately modified to increase the threshold limit specified thereunder from rupees one crore to rupees two crore, so as to avoid any ambiguity in interpreting the true intent of law regarding maintenance of books of account and audit of the same where the total turnover, gross receipts exceed rupees one crore but does not exceed rupees two crore.

8. Clause 26 – Section 44AD – Proposed deletion of proviso to sub-section (2) providing for deduction of interest and

remuneration paid to partners by firm from the presumptive income under section 44AD – Proviso to remain to avoid genuine hardship to small and medium firms

The amendment proposes to disallow deduction of expenditure in the nature of salary, remuneration, interest paid to the partner as per section 40(b) out of presumptive income. This amendment would hit small and medium firms, especially running family businesses. Taxing the entire income of the firm, without deduction for partner's salary/interest paid within the permissible limits set out in section 40(b), at flat rate of tax at 30% may hit the small and medium firms badly and adversely affect their business. This would be against the government's objective of facilitating ease of doing business.

It is pertinent to mention here that the same issue had crept in the past as well. While introducing presumptive income for firms in the Finance Bill 1994, initially there was no provision providing for deduction of interest and remuneration to firm assessees. However, the said proviso was introduced vide Finance Act 1997, thereby giving effect to the true intent of the law, and that too with retrospective effect from 01-04-1994.

Suggestion:

For facilitating ease of doing business by small firms and removing the genuine hardship of having to pay higher taxes on their presumptive income on account of the proposed denial of deduction in respect of remuneration paid to partners within the limits set out in section 40(b), the proviso to section to 44AD(2) may be retained. Similarly, separate deduction may be allowed for professional firms as well in respect of remuneration paid to partners under the proposed new section 44ADA.

9. Clause 27 – Proposed section 44ADA providing for special provision for computing profits and gains of profession on presumptive basis – Issues and concerns arising there from to be addressed

The Finance Bill, 2016 has proposed insertion of a new section 44ADA providing for special provision for computing profits and gains of profession on presumptive basis. This measure would

definitely help the specified professionals in payment as well as compliances under the income-tax law.

9.1 Threshold limit of Rs 50 lakhs may be increased

The sub-section (1) of the proposed provision provides that:

> *"Notwithstanding anything contained in sections 28 to 43C, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA and* ***whose total gross receipts do not exceed fifty lakh rupees in a previous year****,* ***a sum equal to fifty per cent. of the total gross receipts*** *of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession".*

The threshold limit of Rs 50 lakhs appears to be low. Consequently, this provision may not achieve the intended objective of providing relief to professionals in the small and medium segment. Even the Income Tax Simplification Committee headed by Justice R V Easwar recommended a threshold limit of Rs 1 crore. This appears to be a more justifiable limit considering the present economic conditions prevailing in the country.

Suggestion

> *It is suggested that the threshold limit of Rs 50 lakh may be raised appropriately so that a sizable percentage of professionals in the small and medium segment are covered under the said provisions; which would ultimately lead to the achievement of stated objective of introducing the new provision.*

9.2 Rate of estimated tax @ 50% too high

The rate of 50% appears to be on the higher side and may cause very high tax incidence on such professionals particularly since the scheme is intended to cover professionals with low gross receipts/total turnover resulting in low margins due to nature of work and high competition. This high rate may cause a lot of

professionals not to opt for this proposed scheme thereby defeating the ultimate objective of introducing this provision.

Considering the above reasons, the profit @ 50% is difficult to achieve specially for intended professionals with low gross receipts/total turnover. Also, the Income Tax Simplification Committee headed by Justice R V Easwarji has recommended the rate of 33.33% of the receipts as the income from profession.

Suggestion

It is suggested that the estimated rate of income @ 50% of the total gross receipts may be reduced appropriately considering the high cost of providing the services by specified professionals specially the small tax payers having income from profession.

10. Clause 28 – Section 47(xiiib) - Conversion of company into LLP – Clarification required relating to additional condition

LLP is a preferred form of organisation for smooth conduct of business. Accordingly, section 47(xiiib) provides for an exemption enabling smooth conversion, subject to compliance with the conditions. There was a case for making the exemption more liberal by relaxing the turnover limit which is one of the present conditions. However, conversion will become all the more difficult as a result of an additional condition which will deny exemption in a case where the company was possessed of total assets worth Rs. 5 crores in any of the 3 years.

Without prejudice to the above, provision be made prospective to apply to conversions initiated on or after 1st April 2016 so as to protect cases of conversion which have already been initiated before 31st March 2016 but accomplished post March 2016.

The expression "value of total assets appearing in the books of accounts" is not defined and may create certain interpretational issues such as whether status of assets is to be seen on balance sheet date or even one day's presence during the year will be considered if asset no longer exists with the assessee as on balance sheet date. Also, whether 'Miscellaneous Expense' as an item reflected on balance sheet will constitute an asset, treatment of

advance tax paid shown on asset side (with corresponding provisions for tax on liability side), etc. are the other issues which need to be addressed.

Suggestion

1. In view of the above, it is recommended that the condition of asset base being less than Rs. 5 crores be rationalised.

2. Provision may apply prospectively to conversion proposals initiated on or after 1 April 2016.

3. Also, the scope of the term 'value of total assets as appearing in the books of accounts' be clarified to provide certainty and reduce litigation .

11. Clause 30 – Section 50C - Option for adopting stamp duty value on date of agreement – Amendment to be treated as clarificatory in nature

In relation to computing capital gains tax liability on transfer of land or building, proposed amendment gives an option for considering the stamp duty value as on date of agreement instead of stamp duty value on date of registration, subject to part or whole of the consideration being received by way of account payee cheque or bank draft or ECS through bank account on or before the date of agreement. The proposed amendment in section 50C is in line with the similar provision already existing in section 43CA. This provision was, therefore, long due to be incorporated in section 50C. The incorporation of similar provision in section 50C would alleviate the genuine hardship faced by the taxpayers. It is suggested that the amendment may be treated as clarificatory in nature since it conveys the real intent of law to ensure equity in tax treatment vis-à-vis section 43CA.

Suggestion

The amendment may be treated as clarificatory in nature. Alternatively, a circular may be issued to achieve the same result in pending assessments or appeals.

12. Clause 40 – Section 80-IAB – Phasing out of incentive where development of SEZ begins on or after 1st April,

2017 - Phasing out to be in respect of SEZs notified on or after 1st April, 2017

In relation to section 80-IAB, providing for profit-linked incentive for development of SEZ, proposed plan for phase out of incentives/ deduction prescribes a sunset date of 1 April 2017 (FY 2017-18) w.r.t commencement of development. Determination of when development has commenced could become extremely subjective and litigation prone.

Suggestion

Since the qualifying period of deduction starts from year of notification of SEZ, the phase out may also be with respect to SEZs notified on or after 1 April 2017 instead of currently proposed phase out with respect to commencement of development on or after 1 April 2017.

13. Clause 42 – Phasing out of incentive under section 80-IB in respect of production of mineral oil and natural gas, if the specified activity commences on or after 1.4.2017 - Phasing out may be with reference to acquisition of new blocks and commencing discovery process in respect of a block already acquired

Sub-section (9) of section 80-IB, provides, inter alia, deduction of 100% of the profits for a period of seven consecutive assessment years to an undertaking if it begins commercial production of mineral oil on or after 1 April, 1997 and the provision applies to blocks licensed under a contract awarded up to 31st March, 2011 or if it is engaged in commercial production of natural gas blocks licensed under NELP VIII and begins commercial production of natural gas on or after 1 April, 2009.

The Finance Bill, 2016 proposes not to allow the deduction to an undertaking which begins commercial production of mineral oil or natural gas on or after 1st April, 2017.

In this regard, it is noteworthy that many companies have acquired blocks under the scheme eligible under section 80IB(9) by the dates specified in the section. It is well known that the discoveries in the blocks acquired take a very long time and the explorers have to conduct discovery exercises for many years before they are

successful in obtaining commercial production. Those who invested in the blocks rightly believed that the deduction will be allowed if the blocks were acquired under the eligible scheme and the Government intends to allow the deduction for seven years from the year in which commercial production begins.

The announcement of withdrawal of deduction for the assessees commencing commercial production on or after 1 April, 2017 will put the investors of the blocks to a disadvantage.

Suggestion

The sunset clause may be with reference to acquisition of new blocks and for commencing discovery process in the block already acquired. The sunset clause may not be made applicable for commencing commercial production of mineral oil or natural gas in the eligible blocks in which discovery has already commenced before 1 April, 2017.

14. Clause 41 and 49 – Section 80-IAC and 115BA – Special incentives to start-ups – Issues to be addressed

14.1 Definition of "eligible start-up" to include Partnership Firm and Limited Liability Partnership

The Finance Minister vide his Budget Speech, 2016 had made the following statement about incentivizing start-ups in line with the Make in India scheme:

"124. Startups generate employment, bring innovation and are expected to be key partners in Make in India programme. I propose to assist their propagation through 100% deduction of profits for 3 out of 5 years for startups set up during April 2016 to March 2019."

In this regard, clause (ii) of Explanation to proposed section 80-IAC provides that "eligible start-up" means a **company** engaged in eligible business which fulfills certain conditions.

The Finance Bill, 2016 has thus, extended the beneficial provisions of start-ups only to Companies whereas the Start-up scheme of Department of Industry Policy & Promotion for Ministry of Commerce & Industry defines the term Start – up as follows:

*"Startup means an **Entity,** incorporated or registered in India not prior to five years, with annual turnover not exceeding INR 25 crore ...."*

Where, the term **Entity** means Private Limited Company (under The Companies Act, 2013) or a Registered Partnership Firm (under The Indian Partnership Act, 1932) or Limited Liability Partnership (under The Limited Liability Partnership Act, 2008)"

Suggestion

In light of above observations it is suggested that clause (ii) of Explanation to proposed section 80IAC be amended to define "eligible start-up" in line with the Start-up scheme where, the term entity includes Private Limited Company (under The Companies Act, 2013) or a Registered Partnership Firm (under The Indian Partnership Act, 1932) or Limited Liability Partnership (under The Limited Liability Partnership Act, 2008) so as to provide ease of running of business to startup firms and LLP also..

14.2 Benefit of 100% deduction from the year in which the eligible start-up commences its business

Sub-section (2) of proposed section 80-IAC reads as follows:

"(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any three consecutive assessment years out of five years beginning from the year in which the eligible start-up is incorporated."

If the benefit of deduction is provided from the year in which the eligible start-up is incorporated it would result in much avoidable creation of new companies and encourage the formation of various paper/shell companies. To avoid such mis-ultilisation of the incentive, the benefit may be made available from the year of "commencement of business".

Suggestion

It is suggested that sub-section (2) of proposed section 80IAC be appropriately amended to give the benefit of 100% deduction from the year in which the eligible start-up commences its business as against "year of incorporation" to avoid creation of paper/shell companies.

14.3 Profit linked holiday for start-ups

Profit linked holiday for start-ups will not provide any meaningful benefit to start ups since most of them do not make profits in initial years.

Also, the condition that turnover of such start up should not exceed Rs. 25 Crores till 2020-21 is prone to different interpretations. The intention seems to be to convey that a start-up which had lesser turnover in any one or more year may be considered as an eligible start-up. This may, however, be wrongly interpreted to mean that the exemption will be denied to a start-up which is able to secure the turnover limit in any of the years. This may discourage the start-ups from expanding itself. There is also uncertainty whether the exemption secured in the earlier year will be forfeited if the turnover of the start-up reaches 25 crores in a later year.

Most start-ups may not have meaningful income in the initial period. There could be loss incurred in the initial period.

Suggestions

I. In order to encourage start-ups, it is recommended that no turnover limit be prescribed.

II. Alternatively, instead of profit linked deduction, start-ups may also be provided concessions in other aspects, illustratively, longer period for carry forward of loss, removing restriction under section 79, annual advance tax, annual compliance of TDS statements, etc.

15. Clause 43 - New Section 80-IBA - Tax holiday to housing projects – Issues to be addressed

Section 80-IBA provides for 100% deduction of the profits of an assessee developing and building affordable housing projects if the housing project is approved by the competent authority before 31st March, 2019 subject to certain conditions. The concerns arising from these conditions are as follows:

► Built-up area definition to be linked to clause (e) of sub-section (2) which specifies maximum size of residential unit: To

qualify for deduction, as per sub-section (2), size of residential unit in metro cities should not exceed 30 sq. m. and in other than metro cities should not exceed 60 sq. m. However, sub-section (2) does not draw reference to definition of "built-up area" given in sub-section (6), which provides the manner of measuring size of residential unit. In absence of a specific reference to "built-up area", ambiguity arises on the manner in which size of residential unit should be measured to decide eligibility.

► Grammatical error in definition of "residential unit": The definition reads as: '"residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through and interior door in a shared hallway and not by walking through the living space of another household.' The reference to "and interior door" appears to be grammatically incorrect and may be rectified to read as "an interior door". This makes the definition unambiguous and clear.

► Completion period of 3 years: To qualify for deduction, as per sub-section (2), the project should be completed within a period of 3 years from the date of approval by competent authority. The period of 3 years is too short and may be unachievable for large-scale projects. Considering the time lag involved in obtaining regulatory approvals or due to factors beyond control of the developer, the period may be extended to 5 years consistent with proposed amendment enhancing time period in construction of self-occupied property to 5 years to claim interest under Section 24(b).

Suggestion

It is suggested that -

(a) The definition of built-up area in clause (a) to sub-section (6) be linked to clause (e) of sub-section (2) which specifies maximum size of residential unit;

(b) The words "and interior door" in the definition of "residential unit" be replaced with "an interior door" to convey the real intent

(c) The period within which project has to be completed may be extended from three years to five years from the date of approval by the competent authority.

16. Clause 48 – Section 112(1)(c) - Long-term capital gains on shares of a company, not being a company in which public are substantially interested, to be eligible for concessional rate of tax @10% - Amendment to be made effective retrospectively

Section 112(1)(c)(iii) was introduced in the year 2012 to extend the beneficial rate of tax at the rate of 10 percent, on long-term capital gains (which was earlier only available to Foreign Institutional Investors) **to other non-resident investors** including Private Equity Investors.

It is now proposed to amend Section 112(1)(c)(iii) of the Act to replace the word 'unlisted securities' with 'unlisted securities or shares of a company not being a company in which the public are substantially interested' with effect from FY 2016-17.

While proposing the amendment, it has been stated in the Memorandum explaining the Finance Bill, 2016 that under the existing provisions of Section 112(1)(c)(iii) of the Act, a view was taken by some of the Courts that shares of a Private Company do not constitute 'Securities' under SCRA.

The amendment has been proposed **to clarify** that the section was introduced with an intention to extend the benefit to LTCG arising on shares of a company, being a company in which the public are not substantially interested (i.e. private company) as well.

However the amendment is proposed to be applicable from AY 2017-18 onwards.

Although this amendment is proposed as a clarificatory amendment to the existing section 112(1)(c)(iii) of the Act, to clarify that the benefit of the section extends to private company as well, the language of the proposed section purports as if the amendment has been brought prospectively, with effect from AY 2017-18.

In case this amendment (though clarificatory in nature), would apply prospectively, with effect from AY 2017-18, it would tend to jeopardise the tax position adopted by the non-resident assessee prior to April 1, 2016 i.e. who have been paying tax at the rate of 10 percent on long term capital gains on transfer of shares in a

Private Company with effect from April 1, 2013 in conformity with the intention of the law, when it was originally enacted.

As the intention of legislature is clearly to clarify the existing law, amendment to the section with prospective effect would adversely impact the non-residents, who have already undertaken the transactions of sale of shares in a private company in the last few years, with an understanding that this section applies to them.

Suggestion

In the light of the aforesaid, following alternative modes have been suggested:

a) *The amendment to section 112(1)(c)(iii) as proposed in Finance Bill 2016 should be made retrospective with effect from the year in which the amendment in this section was introduced i.e. with retrospective effect from April 1, 2013; or*

b) *A clarificatory circular may be issued by the Central Board of Direct Taxes clarifying that since the amendment is only clarificatory in nature it will take effect from April 1, 2013 i.e. AY 2013-14 and not AY 2017-18 as proposed in the Finance Bill, 2016; or*

c) *Alternatively, rather than inserting phrases to carry out requisite amendment within the sub-clause (c)(iii) to section 112(1), an Explanation may be added after the said clause clarifying that for the purposes of this clause unlisted securities shall include shares of a company not being a company in which the public are substantially interested.*

17. Clause 50 – New Section 115BBDA – Dividend received by resident individuals, HUFs and firms receiving dividend in excess of Rs.10 lakh to be subject to tax @ 10% in their hands – Issues to be addressed

17.1 Clarification required in respect of amount of dividend sought to be taxed under this section

The Finance Bill, 2016 has proposed to insert new section 115BBDA providing for taxation of dividends received from domestic companies in the hands of the specified resident

assessees being an individual, Hindu undivided family or a firm, at the rate of 10%. The proposed section would be applicable in case the specified assessee's total income includes any income exceeding ten lakh rupees, by way of dividends declared, distributed or paid by a domestic company.

However, there appears to be an ambiguity regarding the amount on which proposed tax would be levied, i.e. on the dividend amount in excess of ten lakh rupees or the whole of dividend amount received.

The confusion has arisen due to difference in language used in Memorandum explaining the Provisions of Finance Bill, 2016 and the Budget Speech as well as the language used in section 115BBDA in the Finance Bill, 2016.

Suggestion

*It is suggested that section 115BBDA be amended to reflect the true legislative intent stated in the Explanatory Memorandum. The amendment may be effected in the following manner by adding the words "**received in excess of Rs.10 lakh**" in clause (a) of sub-section (1) after the words "income by way of such dividends" and before the words "at the rate of ten per cent"*

17.2 Consequence of the new levy- Triple taxation

The proposal to tax dividend in the hands of the recipient results in economic triple taxation viz. once as corporate tax on profits, secondly as DDT in hands of the company and thirdly as tax on dividends. The economic tax ultimately borne by resident shareholders may be as high as 54%.

Suggestion:

It is recommended that new levy amounting to third level taxation on profits may be done away with. Alternatively, the earlier system of taxation of dividend, prior to 1997, namely, tax in the hands of the shareholder can be re-introduced and levy of Dividend Distribution Tax in the hands of the company may be removed.

18. Clause 52 – New Section 115BBF – Concessional rate of tax @ 10% on income from patent – Issues to be addressed

18.1 Benefit may be extended to other intellectual property rights

The Finance Bill, 2016 has proposed a new section 115BBF to tax royalty income derived from worldwide exploitation of patents developed and registered in India@ 10%.

It is a welcome proposal and would greatly boost the research and innovation environment in the country. However, the proposed provision provides the benefit of reduced rate of tax to only **royalty income derived from patents** subject to specified conditions. This may partly achieve the intended objective of the government behind introduction of this proposal i.e. to encourage indigenous research & development activities and to make India a global R & D hub, research is the driver of innovation and innovation provides a thrust to economic growth.

The current income tax law treats the other intellectual rights like any know-how, copyright, trade-mark, license, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services in the same vein as patent. Hence, there appears to be no reason not to extend the benefit of proposed section 115BBF to income from other intellectual property rights.

In particular, it needs mention that jurisdictions like Ireland, Luxemburg extend benefit by specifically covering software within the list of qualifying assets though; commercially it enjoys protection under Copyright Act and not under Patent Act.

Suggestion

It is suggested that the benefit of concessional rate of tax @ 10% of income by way of royalty in respect of a patent developed and registered in India be also extended to other intellectual property rights like know-how, copyright, trade-mark etc.

18.2 Benefit restricted to 'true and first inventor of the invention': Benefit may be extended to assignee of the true and first inventor in respect of the right to make an application for a patent

The benefit of proposed provision is restricted to 'true and first inventor of the invention'. As per proposed provision, even a person who is jointly registered with 'true and first inventor' should be 'true and first inventor'.

In view of following features under the Patent law, the benefit of the provision may be denied to firms/LLPs/companies who register the patents jointly with true and first inventor who may be an employee even though they may have incurred significant expenditure for development of the patent and they are first economic owners of such patent.

Under the Patents Act, following persons can apply for patent (a) a person claiming to be true and first inventor of the invention (b) an assignee of the true and first inventor in respect of right to make an application and (c) legal representative of a deceased person who immediately before his death was entitled to apply.

It is also settled under the Patent Act that a company or firm cannot claim to be 'true and first inventor'. They can only apply as assignee of true and first inventor.

Similarly, whether an invention made by employee should belong to employer depends upon contractual relations, express or implied. It is possible that, absent any contractual obligation, an employee may apply for an invention in his own name even though he developed the invention in the course of employment and by using employer's resources.

Suggestion

It is, hence, recommended that the condition of joint patentee also being 'true and first inventor' be omitted. If the intent is to allow benefit only to first person to register patent, the phrase 'being the true and first inventor of the invention' used in context of joint person may be substituted with the phrase 'being the assignee of the true and first inventor in respect of the right to make an application for a patent'.

18.3 Benefit may be extended to capital gains arising on sale of patented products

The taxpayer may exploit its Intellectual Property by outright transfer which has no differential impact merely because for one

assessee the amount is assessable as business income whereas for other it is assessable as capital gains income. There is no reason to exclude amount which is chargeable as capital gains in the hands of the taxpayer.

Suggestion

It is recommended that, in line with BEPS Action 5, in addition to royalty income, this concessional regime should be extended to income on sale of patented products also.

18.4 Extension of benefit to royalty income earned from inventions for which patents are applied under Patents Act 1970 but registration is awaited

The commercial exploitation of invention starts even before it is formally registered as a 'patent' under the Patents Act. The Patents Act recognises that even the right to apply for patent can be assigned. As per the proposed provision, royalty from a patent which is 'registered' alone will qualify for the new regime. If royalty income is earned when patent application is filed but registration is awaited, there may be denial of the benefit.

Suggestion

It is recommended that the concessional tax regime be extended to royalty income earned from patents which are applied for and awaiting registration as well.

18.5 Other Issues which need to be addressed

Some of the conditions for availing the benefit of concessional tax regime is that the patent should be developed and registered in India, the patentee should be a resident and income should be in the nature of royalty.

Suggestions

To make the regime truly meaningful and comparable to the regimes which exist in other jurisdictions, its scope will need to be extended to cover or clarify the following:

a. *Clarify that condition of developed and registered in India is fulfilled once the qualifying taxpayer gets the patent developed under his control and direction while some part of expenditure may be incurred outside India or some part of R&D activity*

(say, not more than a certain percentage, like 20%) may be outsourced to any other agency which works as per the direction and control of the taxpayer.

b. *Clarify that consideration received for settling infringement disputes is also an alternative form of royalty which qualifies for the benefit.*

c. *To provide an option to the taxpayer to opt out of the regime if the expenditure and allowances admissible in computation of royalty income is likely to result in net taxation below the regime prescribed rate.*

d. *Since almost all comparable jurisdictions extend benefit to non-resident permanent establishment which develops IP under the circumstances comparable to those under which IP is developed by the resident. The benefit may be extended to non-resident having permanent establishment in India.*

e. *In case of a business reorganisation in the form of merger, demerger etc., the successor entity and in case of death of the patent owner, its legal heir/inheritor of the patent may be considered as eligible to claim the benefit provided such successor/legal heir satisfies the condition of being a resident of India.*

19. Clause 56 – Section 115QA - Rules to be prescribed for determining the amount received by the company for issue of shares – Rules to be applicable for buy-back effected on or after 01.06.2016

As per the proposed amendment to Explanation (ii) to section 115QA(1), (to be effective from 1st June 2016), consideration received by company on issue of shares to be bought back is to be determined as per the Rules to be prescribed. There is lack of clarity as to cut-off date for applicability of these rules. An issue arises as to whether these rules can be applied only for buy- back of shares taking place after 1st June 2016, or whether the same can be applied even for buy-back of shares prior to 1st June 2016.

Suggestion

a. *It is suggested that a cut-off date for applicability of rules may be prescribed. It is recommended that it should be explicitly*

provided that the rules, once notified, shall be applicable only for computing consideration received on issue of shares in respect of buy back which takes place on or after 1 June 2016.

b. *Further, necessary provision should be incorporated so that the cost paid for intermediate transfers between the shareholders post issue of share by the company is reduced for the purpose of calculating the buy-back tax.*

20. Clause 59-Section 115TCA- Tax on income from Securitisation Trust – Tax Treatment in respect of distributions in April and May 2016 to be clarified

The Finance Bill, 2016 proposes to transition securitisation trusts from distribution tax regime to complete pass through regime (with TDS on distributions). However, the cut-off date between old and new regime is not clear. Distribution Tax applies for distributions upto 31 May 2016 whereas new regime for complete-pass through (with TDS) applies from A.Y. 2017-18. This raises ambiguity on whether distributions made between April, 2016 to May, 2016 are covered under old regime or new regime.

Suggestion

The new regime should be made applicable for distributions on or after 1 June 2016

21. Clause 60 – Proposed Sections 115TD to 115TF –Special provisions relating to tax on accreted income of certain trusts and institutions – Issues to be addressed

As per the intent expressed in Explanatory Memorandum, new Chapter XII-EB is proposed to be inserted to provide for levy of additional income tax in case of conversion into, or merger with, any non-charitable form or on transfer of assets of a charitable organisation on its dissolution to a non-charitable institution. However, sub section (3) deems such conversion to have taken place if registration granted to a trust under section 12AA is cancelled. The process of 'conversion' includes a case where registration of charitable trust is cancelled under section 12AA. There may be host of grounds including inadvertent defaults of non-compliance with section 13(1) which can be a ground for

invoking cancellation under section 12AA. This neither indicates intent to convert property into a non-charity nor a case where the charitable objects are abandoned. In fact, the order cancelling registration under section 12AA is appealable and there is a possibility of reversal of such order at the appellate stage.

Further, sub section (5) requires payment of tax within fourteen days of the cancellation of registration under section 12AA, which may cause hardship in genuine cases. There are a number of judgements where the orders of cancellation of registration have been struck down subsequently in appellate proceedings. In such circumstances, requiring the trust to pay the tax and interest, when an appeal is pending, may not be justifiable.

The levy of exit tax may result in double taxation in cases where a whole or part of the amount, may have been assessed to tax in earlier years. For instance, trust may have suffered tax on account of non-compliance of provisions of section 11 or section 13.

Accordingly, the amount on which tax has been levied in an earlier year should not be included once again while computing accreted income for levy of exit tax.

Suggestions

a. *The provisions of Chapter XII-EB be appropriately aligned with the intent expressed in the Explanatory Memorandum i.e., to levy exit tax only in case of* ***voluntary wind-up of activities or dissolution or merger with charitable/non-charitable institutions or conversion of charitable institution into non-charitable institution.***

b. *Without prejudice to generality of the above suggestion, it is suggested that, in case of cancellation of registration under section 12AA, the payment of tax should be stipulated within fourteen days from the disposal of the appeal, if any filed against the cancellation order. Accordingly, the proposed section 115TD (5) be reframed to include the following:*

"The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from,—

(i) the date the order for disposing of appeal is received by the assessee in case where the relevant cancellation order is the subject matter of an appeal to the Appellate Tribunal under section 253."

c. *The amount on which tax has been levied in an earlier year due to non-compliance of the provisions of section 11 to 13 should not be included once again while computing accreted income for levy of exit tax, since the same would result in double taxation.*

22. Clause 65 - Section 139(4) and 139(5) – Time limit for filing belated return reduced and enabling provisions for revising belated return introduced - Reference to return in response to section 142(1) to be included in Sections 139(4) and 139(5)

Section 139(4) provides that a person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under ***sub-section (1) of section 142***, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Section 139(5) provides that if any person, having furnished the return under sub-section (1), or in pursuance of a notice issued under **sub-*section (1) of section 142*** discovers any omission or any wrong statement therein, he may furnish a revised return at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier.

Clause 65 of the Finance Bill, 2016 has proposed to substitute section 139(4) & 139(5) as follows:

> *"(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.";*

"(5) If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.";

Reference to return filed in response to section 142(1) is missing in new sub-section (4) and sub-section (5) of section 139.

As per the Explanatory Memorandum to the Finance Bill, 2016, the return which can be revised under section 139(5) also includes a return furnished in response to notice issued under **sub-section (1) of section 142.** However, reference to notice under section 142(1) does not find place in the new sub-section (5) in the Finance Bill, 2016.

Suggestion

It is suggested that-

(i) Reference to sub-section (1) of section 142 may be reinstated in new section 139(4) i.e., enabling provision to be made for filing of belated return in response to notice under section 142(1).

(ii) Section 139(5) may be amended to provide for revision of return filed in response to notice under section 142(1), in line with the intent expressed in the Explanatory Memorandum.

23. Clause 66–Section 143(1) – Increase in scope of "Incorrect claim apparent from any information in the return" – New sub-clause (iv) to be redrafted to include specific reference to report under section 44AB

The Finance Bill, 2016 has proposed to bring amendment by inserting sub-clause (iv) to sub-section (1) of section 143 for disallowing expenditure indicated in the "audit report" but not taken into account in computing the total income in the return.

Since disallowance of expenditure is expressly and exhaustively covered in the format of report under section 44AB, sub-clause (iv)

needs to be appropriately redrafted to include specific reference to the report under section 44AB.

Suggestion

It is suggested that sub-clause (iv) may be appropriately reworded to disallow expenditure indicated in the report of audit to be furnished under section 44AB but not taken into account in computing total income in the return.

24. Clause 81 – Section 194LBB – Tax to be deducted at rates in force where the payee is a non-resident - Relief from tax withholding obligation of AIF in respect of distribution of exempt income may be provided

Section 194LBB which provides for TDS on distributions by category I and II AIFs, now requires deduction of tax at rates in force where the payee is a non-resident. There is no exemption from requirement to deduct tax even in respect of distribution of exempt income like dividend or exempt LTCG. This leads to cash trap for both residents and non-residents on exempt income.

Suggestion

Appropriate amendment may be made to exclude distribution of exempt income from scope of section 194LBB.

25. Clause 86 – Section 206C - TCS on sale of motor vehicles of value above Rs. 10 lakhs- Enabling provision for filing of declaration by buyer for non-applicability of TCS in case of use of motor vehicle for own transportation business may be inserted

TCS levy may have cascading impact in terms of compliance. Compliance may be needed by each seller, including the manufacturer, distributor and the dealer. The definition of 'buyer' excludes a buyer in retail sale of motor vehicle purchased by him for 'personal consumption'. However, the scope of such 'personal consumption' is not clear whether it includes use for business purpose like transport, leasing or provision to employees as car perquisite for official & personal use.

It is true that section 206C(1A) provides opportunity to buyer (who is not a buyer in retail sale of motor vehicle for 'personal consumption') to furnish declaration for avoiding TCS but such

declaration can be given only if the motor vehicle is to be used for the purposes of manufacturing, processing or producing any article or thing or for the purpose of generation of power and not for trading purpose. On a plain reading of the provision, the declaration cannot be given if the motor vehicle is to be used in transport business or for transport purpose and/or leasing and/or provision to employees.

Suggestion

It is suggested to introduce an enabling provision for filing of declaration by buyer for non-applicability of TCS in case of use of motor vehicle for own transportation business. To safeguard the interests of Revenue, such facility may be provided only if buyer furnishes his PAN.

26. Clause 87 and 89 – Section 211 and 234C –Advance tax to be paid in one instalment on or before 15th March by assessees opting for presumptive taxation under section 44AD- Similar benefit may be extended to assessees opting for section 44ADA

The Finance Bill, 2016 has proposed to amend section 211 by substituting sub-section (1) and providing, *inter alia*, that an eligible assessee in respect of eligible business referred to in section 44AD opting for computation of profits or gains of business on presumptive basis, shall be required to pay advance tax of the whole amount in one installment on or before 15th March of the financial year.

The said benefit is not proposed in the newly introduced section 44ADA providing for presumptive taxation scheme for professionals. Extension of onetime payment of advance tax on or before 15th March of the Previous Year would further incentivize the professionals to opt for the presumptive taxation. It would also bring the assessees opting for section 44AD and 44ADA on the same footing as regards the payment of advance tax is concerned.

The extension of the said benefit would also require consequential amendment in section 234C in line with amendment proposed in clause (b) of sub-section (1) there under regarding assessees opting for section 44AD.

Suggestion

It is suggested that section 211(1) be suitably amended so as to include section 44ADA within its ambit in the manner similar to section 44AD as proposed in sub-section (1)(b) in the Finance Bill, 2016.

Further, consequential amendment may also be made in section 234C in line with amendment proposed in clause (b) of sub-section (1) regarding assessees opting for section 44AD.

27. Clause 88 – Section 220(2A), 273A, 273AA – Time limit for disposing waiver applications provided - Consequence of not passing the order within the time limit to be spelt out

Provision incorporated in sections 220, 273A and 273AA requiring disposal of wavier applications within twelve months of receipt of application. However, there is no specific provision to address the consequences, if authority does not pass waiver order within stipulated period.

Suggestion

The time limit may be redundant unless there is a specific provision for consequences in case of failure to pass the waiver order within prescribed time limit. Hence, it may be provided that, if the Principal Commissioner/ Commissioner fails to pass the order within the time limit, interest, penalty etc. should be deemed to be waived.

28. Clause 96- New section 270A to be inserted to provide for levy of penalty in case of under reporting income and misreporting of income- Issues to be addressed

28.1 Penalty order under section 270A be made an order appealable before Commissioner (Appeals) under section 246A

The Finance Bill, 2016 has proposed new section 270A providing for penalty in case of under-reporting and misreporting of income. As per the proposed provisions in the Finance Bill, 2016, the said penalty order under section 270A has not been made appealable under section 246A i.e., no appeal would lie against the penalty order under section 270A before the first appellate authority i.e.,

Commissioner (Appeals). Although an amendment has been proposed in section 253 providing for appeal to Tribunal against such penalty order, no such amendment has been proposed in section 246A.

In a case where the said penalty order is imposed by an Assessing Officer below the rank of Commissioner, it is desirable that an appeal may be filed against the same to Commissioner (Appeals). It may be noted that the penalty order under the existing section 271 is an appealable order under section 246A. There appears to be an inadvertent omission in not including an order under section 270A as an order appealable before Commissioner (Appeals) under section 246A.

Suggestion

It is suggested that section 246A may be suitably amended so as to provide that penalty order under section 270A passed by Assessing Officer below the rank of Commissioner may be made appealable under section 246A before Commissioner (Appeals).

28.2 Insertion of reference to section 270A(8) under section 273AA

Section 270A(8) provides for levy of penalty of 200% in cases of misreporting of income. It is pertinent to note that **Section 273A** of the Income-tax Act, 1961 provides for reduction/ waiver of penalty involving cases falling ***under clause (c) of sub-section (1) of section 271 where penalty upto 300% of tax ought to be evaded.*** *However*, there is no provision in section 273A for wavier of penalty imposed under section 270A. This appears to be an unintended omission.

It may also be noted that the proposed ***section 270AA*** has enabled an assessee to make an application for ***immunity from penalty & prosecution for cases involving under reported income under section 270A.*** Similar remedy is not available for cases of misreporting of income.

Suggestion

It is suggested that section 273A may be amended to include reference to Section 270A (8) i.e., mis-reporting of income under its purview.

28.3 Penalty for under-reporting of income

There are certain concerns arising out of the provisions of new section 270A, due to which it is likely that the implementation may not yield the desired result and fresh litigation is likely to arise while interpreting the new provision.

Suggestion

Without prejudice thereto, with regard to the newly introduced methodology of levying penalty, the following ***suggestions*** *may be considered.*

- *By way of express requirement, the Assessing Officer may be required to initiate the proceedings prior to or concurrently with the closure of assessment proceedings. Unless this is done, there may be initiation of penalty several years after the assessment proceedings are completed. The time limit under section 275(c) is, unfortunately, linked with the date of initiation of proceedings.*

- *Unlike Explanation 3 of section 271(1)(c), in the proposed provision, where return of income is not furnished, penalty will be calculated with reference to tax on income assessed without considering the impact of tax deducted or advance tax paid by taxpayer. For example, in case of a person who is not required to furnish return of income under section 115A(5), tax may have been paid, but, as per new methodology, the whole of the income, as assessed, may be considered as unreported income. Such would also be the case in a situation where there is no revenue loss since the whole of the tax was already paid up and yet, the return may not have been furnished.*

- *There may be some concern on resolution of the formula specified in the section if, intimation under section 143(1)(a) is not available. It may be good to clarify that, in such a case, returned income will be the substituted basis.*

- *If immunity is granted u/s. 270A, the immunity holds valid against initiation of prosecution u/s. 276C. The reference may also be made to section 276CC which can be invoked in a case where there is failure to furnish return of income.*

- *As per proposed section 270A(10), the tax payable on under-reported income shall be amount of tax calculated (a) in the case of company, firm or local authority, on under-reported income as if the under-reported income were the total income and (b) in case of any other assessee, at the rate of 30% on under-reported income. This provides iniquitous results when under-reporting is of income chargeable at lower rate (say, long term capital gains). In case of company, firm or local authority, the penalty shall be computed @ 20% of under-reported LTCG whereas in case of other taxpayers, the penalty shall be computed @ 30% of under-reported LTCG. Further, benefit of slab rate shall also not be available to individual/HUF taxpayers.*

  Hence, to ensure parity between company/firm / local authority and other taxpayers, it is recommended that the tax should be computed on slab rate and/or lower rates as applicable to nature of under-reported income.

28.4 Order to specify the specific clause of under-reported or misreported income for levy of penalty under section 270A

The newly proposed section 270A has done away with the undue discretion in the hands of Assessing Officer by imposing penalty at the rate of either 50% or 200% depending on whether the income is under reported or misreported. Certain controls may be required in the effective implementation of the proposed section.

In order to reduce the practice of Assessing Officers treating every concealed income as misreported as well as the fact that the new section does not require recording of satisfaction before imposition of penalty proceedings (as was required under the erstwhile section 271), it is desirable that a suitable control mechanism may be put

in place. Certain measures like making it mandatory for the Assessing Officers to mention in the Order that every disallowance or addition be specified as either under-reported or misreported.

Further, measures like specifying the exact clause from sub-section (2) or (9) of section 270A ,in case of under-reporting or misreporting of income respectively in the order would go a long way in reducing disputes and litigation. The said measures would also make it clear to the assessee in time whether he could opt for immunity from penalty and prosecution under the proposed section 270AA in case order specifies that he has not misreported the income.

Suggestion

It is suggested that suitable amendments be introduced or alternatively administrative instructions may be issued so that each order contains the specific fact of either misreported income or under-reported income or both along with the mention of specific clause of section 270A(2)/(9) against each disallowance/addition. Such measures would act as a suitable control mechanism in the absence of recording of satisfaction to initiate penalty proceedings and would also enable assessee to opt for proposed section 270AA providing for immunity from penalty and prosecution in case income is not misreported.

28.5 Clarification when tax increases due to re-characterisation of income under a different head of income but assessed income equals the returned income

Another issue in this regard is that proposed section 270A is not providing clarity in a situation when assessed income is determined to be equal to returned income during the assessment proceedings but tax amount increased due to change/increase in tax rate. This may happen when a certain income returned by an assessee as a long term capital gain but the said income is assessed as income from other sources thereby leading to increase in tax amount. At present, the different clauses under the sub-section (2) and (9) of proposed section 270A does not cover the said situation. It is not clear whether the said increase in tax amount would be treated as under-reported income or misreported income.

Suggestion

It is suggested that suitable clarification may be issued regarding the situation when tax amount is increased due to rate increase (on account of, say, change of head of income from long term capital gain income to profits and gains of business or profession or income from other sources) although the returned income and assessed income are exactly same.

28.6 Mere making of a claim which is not sustainable in law would not tantamount to furnishing inaccurate particulars for attracting levy of penalty

Scope of penalty under proposed section 270A has been widened and it would now include within its scope, claims made by the assessee but disallowed by the Assessing Officer. Where no information given in the return is found to be incorrect or inaccurate, and the assessee has disclosed all material facts relevant for assessment, he cannot be held guilty of furnishing inaccurate particulars. This principle of law has been settled by the Apex Court ruling in Reliance Petro Products' case. Therefore, mere making of a claim which is not sustainable in law would not tantamount to furnishing inaccurate particulars for attracting levy of penalty. However, such cases are now proposed to be included within the ambit of under reported income under the new section 270A and penalty would be attracted@50%.

Suggestion

It is suggested that proposed section 270A may be suitably amended so that penalty is not automatically attracted for merely making of a claim which is not sustainable in law.

29. Clause 108 – Section 281B - Provisional attachment of property- Treatment of amount realized by invoking bank guarantee- Clarification required.

Section 281B empowers Assessing Officer to invoke bank guarantee wholly or in part if demand raised on the assessee is not paid within time limit provided in the demand notice served. Very wide powers are conferred upon Assessing Officer. Mere non-payment within notice period will empower Assessing Officer to invoke bank guarantee. There is no clarity on the situation where the application for stay of demand is pending before Assessing

Officer or any higher authority or in case of automatic stay on payment of 15% demand.

The section provides that the amount collected by invoking bank guarantee is to be adjusted against demand payable and surplus, if any, to be deposited in personal deposit account of the Commissioner or Principal Commissioner in the branch of prescribed banks. Given that section 281B(2) provides for maximum period of attachment to be 2 years from the date of attachment or 60 days from the date of assessment order, whichever is later, reasons for depositing the amount in the personal deposit account of authority and not to refund the same to the taxpayer is not clear.

Suggestion

It is recommended to clarify the aforementioned issues through appropriate amendments/circulars.

30. Chapter IX of the Finance Bill 2016 - The Income Declaration Scheme, 2016- Issues to be addressed

30.1 Clarity on definition of the term 'declarant' [Clause 179(a) of the Finance Bill, 2016]:

As per clause 179(1), declarant means a person making declaration under clause 180(1). Clause 180(1) provides that any person can make a declaration in respect of income chargeable to tax under the Act subject to fulfilment of some conditions. However, Finance Minister in Budget Speech stated that the scheme will be open to domestic taxpayers.

Suggestion:

It is recommended to clarify whether non-residents who fulfil the other stated conditions in clause 180(1) are also allowed to avail opportunity under the scheme.

30.2 Impact of receipt of notice, which bears no reference to the undisclosed income sought to be declared, on availment of this scheme:

Clause 193(e)(i) provides that the Income Declaration Scheme shall not apply in relation to any undisclosed income chargeable to

tax under the Act where notice under sections 142/ 143(2)/ 148/ 153A/ 153C has been issued in respect of an assessment year.

Suggestion:

As per the proposed scheme, the declaration cannot be made by a person who has received a notice under section 142 or 143(2) or 148, etc. It is possible that the notice bears no reference to the undisclosed income which is sought to be declared. It may be considered whether eligibility should be extended to a case where the declared income does not bear any nexus with the notice.

30.3 Immunity from other Acts:

Clause 189 provides that declaration under Income Declaration Scheme will not be used as evidence against the declarant for any proceeding under the Act and Wealth tax Act. Clause 187 provides immunity from Benami Transactions Prohibition Act, subject to conditions.

Suggestion

Immunity may be granted under other laws, such as SEBI, IPC etc.

30.4 No scrutiny or enquiry in relation to declarations filed by the taxpayer:

The Finance Minister has, in his Budget Speech, stated that no scrutiny or enquiry will be made in respect of the declarations. However, no such provision has been made in Finance Bill 2016. A notable concern is whether taxpayer will be called upon to explain source of income / assets forming part of the declaration.

Suggestion:

It is recommended that suitable clarification be made in the scheme itself to avoid any ambiguity.

30.5 Non-applicability of scheme in cases where notice under section 142 or section 143(2) is issued

Para 160 of the Budget Speech 2016 reads as follows:

"160. I propose a limited period Compliance Window for domestic taxpayers to declare undisclosed income or income

represented in the form of any asset and clear up their past tax transgressions by paying tax at 30%, and surcharge at 7.5% and penalty at 7.5%, which is a total of 45% of the undisclosed income. There will be no scrutiny or enquiry regarding income declared in these declarations under the Income Tax Act or the Wealth Tax Act and the declarants will have immunity from prosecution. Immunity from Benami Transaction (Prohibition) Act, 1988 is also proposed subject to certain conditions. The surcharge levied at 7.5% of undisclosed income will be called Krishi Kalyan surcharge to be used for agriculture and rural economy. We plan to open the window under this Income Disclosure Scheme from 1st June to 30th September, 2016 with an option to pay amount due within two months of declaration."

As per sub-clause (e) of clause 193 of the Finance Bill 2016, the provisions of this scheme shall not apply in relation to any ***undisclosed income*** chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2017—

(*i*) ***where a notice under section 142 or sub-section (2)*** of **section 143** or section 148 or section153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer; or

(*ii*) where a search has been conducted under section 132 or ***requisition*** has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under sub-section (*2*) of section 143 for the assessment year relevant to such previous year or a notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been issued and the time for issuance of such notice has not expired; or

(*iii*) where any information has been received by the ***competent*** authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such ***undisclosed asset***.

Non-applicability of the scheme in cases where notice under section 142 or section 143(2) has been issued does not seem to be justified as there is no requirement to record prior satisfaction before issuance of notice in such cases.

Suggestion

Under clause 193(e)(i), ***notice issued under section 142 or sub-section (2) of section 143 may be deleted*** *as no prior satisfaction is recorded and mere issue of notice cannot be taken as non-declaration of income as held by judicial fora in the past.*

31. Clause 198 – New Chapter X of the Finance Bill 2016-The Direct Tax Dispute Resolution scheme, 2016 - Issues to be addressed

31.1 Clarification in case where appeal is pending as on 29th February, 2016 but decided/adjudicated upon before the date of filing of declaration

The Hon'ble Finance Minister, vide his Budget Speech, Union Budget 2016 had said the following about proposed Direct Tax Dispute Resolution Scheme, 2016. The extract of his Speech is given below:

> *"162.Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the tax payers and administrative cost for the Government. There are about 3 lakh tax cases pending with the 1st Appellate Authority with disputed amount being 5.5 lakh crores. In order to reduce this number, I propose a new Dispute Resolution Scheme (DRS)*

The said scheme would be applicable to "tax arrear" in respect of appeal(s) pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on 29.02.2016. "Tax Arrear" has been defined as the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 in respect of such appeal(s). The pending appeal could be against an assessment order or a penalty order.

As per clause 198 of the Finance Bill 2016, "specified tax" means a tax—

(*i*) the determination of which is in consequence of or validated by any amendment made to the Income-tax Act or the Wealth-tax Act with retrospective effect and relates to a period prior to the date on which the Act amending the Income-tax Act or the Wealth-tax Act, as the case may be, received the assent of the President; and

(*ii*) a dispute in respect of such tax is pending as on the ***29th day of February, 2016;***

This scheme is a welcome step however a clarification is needed with regard to the availment of the Direct Tax Dispute Resolution Scheme, 2016 in cases ***where appeal is pending as on 29th February, 2016 but decided/adjudicated upon before the date of filing of declaration under the said scheme by the assessee.***

Suggestion

It is suggested that clarification is needed with regard to the availment of the Direct Tax Dispute Resolution Scheme, 2016 in cases where appeal is pending as on 29th February, 2016 but decided/adjudicated upon before the date of filing of declaration under the said scheme by the assessee.

31.2 Clause 199– Declaration of tax payable

As per clause 199 of the Finance Bill 2016, the declarant under the scheme would be required to pay-

(*a*) tax and interest,—

(*i*) in a case where the disputed tax does not exceed ten lakh rupees, the whole of the disputed tax and the interest on disputed tax till the date of assessment or reassessment, as the case may be; or

(*ii*) in any other case, the whole of disputed tax, ***twenty-five per cent of the minimum penalty leviable and the interest*** on disputed tax till the date of assessment or reassessment, as the case may be;

(*b*) penalty, twenty-five per cent of the minimum penalty leviable and the tax and interest payable on the total income finally determined.

The issue is with regard to levy of penalty when the ***disputed tax is more than rupees ten lakh***. *There is* ***no logic in levying such a penalty as cases above rupees ten lakh involves question of law so automatic penalty shall not be leviable in such cases.***

Suggestion

The provision for levy of 25% penalty in case where disputed tax is more than rupees ten lakh should be dropped from clause 199 of the Bill.

31.3 Benefit of this scheme should not be restricted to CIT(A)

Clause 199 read with clause 198(h) of the Finance Bill 2016 provides that declaration can be filed for settlement of disputed taxes only in respect of an ***appeal pending before CIT(A)***. There is ***no reason for restricting this benefit to appeal pending before the first appellate authority***.

Suggestion

The proposed scheme should cover ***appellate forums [Commissioner (Appeals), Tribunal, HC, SC],*** *either at the instance of taxpayer or at the behest of tax authority. If this provision is extended to all such appeals, pending litigation before all such judicial authorities will get reduced.*

31.4 Clarification is required with regard to applicability of this scheme in all retrospective cases

Clause 199 of the Bill relates to settlement of disputed taxes levied due to retrospective amendment in the Income-tax Act, 1961 and Wealth-tax Act, 1947. In such cases only tax is payable and no interest or penalty is payable.

It appears that this provision is made with a view to settle the disputed taxes levied due to retrospective amendment made in section 9 by the Finance Act, 2012.

Suggestion

Clarification is needed with regard to this scheme's applicability in all retrospective cases pending before any authority

31.5 Issues common to 'Tax Arrears' and 'Specified Tax'

a) ***Adjustment of past refunds due to declarant*** - *If any refunds are pending for the prior assessment years, DRS should enable adjustment of past refunds due again**st the amount determine**d payable under DRS instead of* requiring the taxpayer to pay afresh.

b) **Refund of penalty or interest already paid earlier** - DRS empowers designated authority to waive penalty or interest in certain circumstances. Taxpayer may have paid penalty or interest in the past due to coercive measures to recover outstanding demand. If immunity or waiver is granted for penalty or interest due to resolution of underlying tax dispute under DRS, DRS should provide for refund of any penalty or interest which taxpayer may have already paid in the past.

c) **Adjustment of past dues against tax or interest** – A suitable clarification is required on whether the amounts already paid against outstanding demand up to date of declaration should be first adjusted towards outstanding tax or interest.

d) **Instalment facility** - Taxpayer may be granted facility to pay the arrears in instalments in genuine cases at the discretion of designated authority. If there is failure to pay as per schedule, Taxpayer may claim benefit of scheme to the extent of arrears discharged by him. Alternatively, the benefit may be rolled back in full and refund may be granted; giving him the opportunity to pursue matter in appeal.

e) Where scheme to be availed only for **part of the issues**:

- It is quite possible that, by way of a compromise, the taxpayer may also have to give up, amongst the issues of some controversial nature, the additions on which he may be very strong on

merits. Requiring such an assessee to necessarily deposit and bear and admit penalty @25% of minimum penalty is not considered to be fair. The provision is based on a pre-judgement of the issue against the taxpayer. We suggest that the collection may be restricted to disputed tax and interest levy, as specified in the provision.

- In cases where a number of issues are disputed in a single appeal pending before CIT(A) (or ITAT/HC/SC, in case of 'specified tax'), clarification is needed as to whether the taxpayer can opt for partial compromise by resolving some of the issues under DRS while continuing to litigate on the other issues.

- If penalty or interest has been levied on multiple issues and Taxpayer has filed a declaration only in respect of some of the issues in appeal, a clarification is required as to whether or not the benefit of immunity or waiver, as the case may be, would extend to all the issues in appeal. If the immunity is available only on part of the issues which are resolved consequent to payment of taxes under DRS, the Taxpayer should be allowed to keep the appeal alive and agitate the other grounds in appeal.

f) **Resolution of dispute between Designated Authority and declarant** – Clarification is required as to the remedy available in case the Designated Authority determines amount payable by the declarant at a figure different from amount worked out by declarant.

g) **Rejection of declaration** - DRS should mandate Designated Authority to provide declarant sufficient opportunity of being heard before rejecting the declaration.

h) **Amendment of order** – Clarification is required as to whether the Designated Authority can amend or rectify the order certifying the amount payable under DRS, without giving an opportunity of being heard.

i) **Vicarious liability** - In case of a declarant who is a company, it may be clarified that immunity extends to persons having vicarious liability (for e.g. directors).

Issues pertaining to 'Tax Arrears'

a) **Coverage of penalty disputes** – An issue which needs to be addressed is whether settlement of dispute for penalty is restricted only to cases of concealment penalty or whether the same extends to other penalties as well. Another issue pertains to the quantum of amount payable under DRS, in the latter case. These issues have to be suitably addressed.

b) **Coverage of TDS disputes:** Clarification is needed as to whether appeal against an order under section 201 can be settled under DRS as well as the manner in which the amount payable under scheme in such a case is to be determined.

c) **Impact on quantum appeal if penalty dispute is settled:** In case of standalone settlement of penalty appeal, taxpayer is liable to pay tax and interest payable on total income finally determined in addition to pay 25% of minimum penalty leviable.

The issue under consideration is whether quantum appeal pending before Tribunal will become academic and be liable to be withdrawn. If not, the position as regards refund of taxes in case Tribunal decides quantum appeal in favour of Taxpayer needs to be clarified.

Further, the status of department appeal filed to Tribunal against CIT(A) order in quantum matter which is pending on the date of settling penalty matter is another issue which needs to be addressed. Consequent issue is whether payment of tax and interest would be with respect to amount determined in order giving effect to order of CIT(A).

Issues pertaining to 'Specified Tax'

a) **Expanding scope to department appeal** - If taxpayer succeeds at lower appellate level and gets refund; department appeal pending before higher appellate authority as of 29 February 2016 cannot be settled by Taxpayer under DRS. Taxpayer may

be interested in such cases because chances of succeeding at higher appellate level are low (due to retrospective amendment) and there is immunity from interest and penalty under DRS.

b) **Waiver of interest -** In the context of 'specified tax' which grants waiver of interest, a clarification is required as to the kind of 'interest' which can be waived. Interest may have been levied under sections 234B and 220(2). As Taxpayers should be insulated from all effects of retroactive amendments, ideally, the scheme should empower designated authority to waive interest levied under section 234B as well as 220(2).

c) **Consequential effect -** If dispute on 'specified tax' is settled under DRS, DRS may provide clarity on whether consequential relief would be available by granting deduction of expenditure under section 40(a)(i) or 40(a)(ia). The consequential relief may extend to interest and penalty to the extent relating to disallowance of expenditure.

Suggestion

In order to encourage taxpayers to avail DRS, there is a need for clarity in respect of these issues.

32. Income Computation and Disclosure Standards (ICDSs)- Need for postponement of date of application

Last year, the Income Computation and Disclosure Standards (ICDSs) were notified via Notification No. 32/2015, dated 31.03.2015. The said Notification has come into force with effect from 1st April, 2015, and hence is applicable to the assessment year 2016-17 and subsequent assessment years. These standards are applicable to the computation of income under the heads "Profits and gains of business or profession" and "Income from other sources". The preamble states that if there is any conflict between the provisions of the Act and the ICDS, the latter will prevail.

The standards contradict with the provisions of the Act and also the decisions of High Courts and Supreme Court on the basis of interpretation of provisions.

ICDSs does not recognize the universally-accepted accounting principle such as 'prudence', materiality etc. Many settled positions have undergone a change.

The concept of "prudence" as per Accounting Standard is that anticipated profits are not recognized but known losses & liabilities are provided on best estimate basis. However, as per ICDSs, any expected loss shall not be recognized unless specifically required by any other provisions of ICDSs (viz. marked to market losses on foreign exchange fluctuations).

ICDSs leads to accelerated recognition of income and, as a result, front-loaded tax payouts. For example, taxpayers earning income by way of bank interest, interest on securities/bonds/deposits etc. may have to recognize income on a "time basis" under the provisions of ICDS IV. Earlier, income was recognized only when it became due.

ICDS introduces new concepts which have been left undefined, for instance, 'reasonable cause' for change in accounting policy or 'reasonable certainty' for recognition of provisions and contingent assets. These are highly subjective and hence prone to different interpretations.

Taxpayers are already grappling with regulatory changes of the Companies Act, 2013, Ind-AS and the proposed GST. The Assessees and Industry should be allowed more time to deal with another change of this nature. Even Income Tax Simplification Committee headed by Justice R V Easwar felt that many of the provisions of the ICDSs are capable of generating a legal debate about which at present there is no clarity.

Although it has been clarified that ICDS are only for computation of income and not for maintenance of books of accounts, the deviations between ICDSs and Accounting Standards are such that they require detailed computation and reconciliation which may, in effect necessitate maintenance of separate records for tax purposes.

ICAI feels that maintenance of separate records for tax purposes, creates confusion, interpretation issues, multiplicity of records and additional compliance burden which may outweigh the gains to be obtained by the application of ICDSs. It has also been felt by the

Income Tax Simplification committee that ICDSs deal only with the method of accounting and at best, it brings timing difference on recognition of expenditure or income as compared to the books of account. Therefore, a detailed study of the implications of the ICDSs is necessary before it is implemented. Further, the Income Tax Simplification Committee also recommended that the implementation of the ICDS be deferred by making a suitable amendment under section 145(2).

Suggestion

It is suggested that applicability of ICDS be postponed until the concerns of taxpayers are suitably addressed.

Suggestions relating to International Taxation

33. Clause 53 – Section 115JB - Applicability of Minimum Alternate Tax (MAT) on foreign companies – Benefit may be extended to foreign companies having permanent establishment and covered under the presumptive tax regime in India

The Ministry of Finance has clarified that foreign company not having a permanent establishment in India will be exempt from MAT. An appropriate amendment has been proposed to be made in the Act in section 115JB in this regard.

The Income-tax Act, 1961 contains various provisions which provides for presumptive tax regime for non-residents (for example Section 44BB).

Under the presumptive tax regime, foreign companies pay tax at lower rate. Such foreign companies do form permanent establishment in India even when their activities are confined to the areas specified in the presumptive tax provisions. If such foreign companies are subjected to MAT, the purpose for which the beneficial concessional tax rate regime has been introduced is specified in the relevant sections would be defeated.

MAT levy may be restricted to India profits

Companies not having PE or Place of Business in India are proposed to be eligible for absolute exclusion from MAT levy. However, in relation to foreign companies with presence in India, who may or may not have separate India specific accounts, issue may arise whether book profits should be computed based on global profits or only with regard to India profits.

Suggestion

It is suggested that

(a) a suitable amendment may be made providing that foreign companies having permanent establishment in India and covered under the presumptive tax regime may be kept outside the purview of MAT.

(b) in order to avoid any controversy, it may be clarified that in case of foreign companies having PE / Place of

Business in India, the computation of book profits should be based on India profits and not global profits.

34. Clause 85 – Section 206AA - Exemption from requirement of furnishing PAN under section 206AA to certain non-residents – Request to treat the amendment as clarificatory

The Hon'ble Finance Minister has, in para 176 of his Budget Speech [Union Budget 2016-17] stated that non-residents without PAN are currently subjected to a higher rate of TDS. Hence, he proposed to amend the relevant provision to provide that on furnishing of alternative documents, the higher rate will not apply.

The said beneficial provision appears to be clarificatory in nature and hence, may be given effect to since the inception of section 206AA.

Suggestion

It is suggested that this amendment be treated as clarificatory.

35. New Chapter VIII of the Finance Bill, 2016 - Equalisation Levy-Issues to be addressed

The Finance Bill, 2016 has proposed to insert a new Chapter VIII titled "Equalisation Levy" in the Finance Bill, 2016 to provide for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India. In other words, the finance Bill, 2016 proposes a levy of 6% on consideration paid or payable by an Indian resident carrying on business or profession, or by an Indian permanent establishment of a non-resident to a non-resident not having a permanent establishment in India, for providing specified online advertisement services.
Certain issues arising from the same are as below:

- The responsibility for payment is cast on resident payer to deduct and deposit the levy. Interest and penalty have been proposed for delay or failure of compliance. This would

involve additional cost of compliance to Indian businesses. It is an indirect levy.

- The equalization levy is proposed to be a separate levy under the Finance Bill, 2016 and will not be part of the Income-tax Act, 1961. This results in defeating the option available to a non-resident of choosing the more beneficial option between the Treaty and the Income-tax Act, 1961.

- Also, the non-resident may not be able to claim tax credit of this levy in his country of residence, if the DTAA allows foreign tax credit in respect of tax paid under the Act and not in respect of similar taxes paid which are outside the ambit of the Income-tax Act, 1961. It is recommended that the provision be withdrawn or be enacted under Act.

Suggestion

In view of the issues detailed above, it is suggested that the proposal to introduce levy in the present form may be reconsidered. Particularly, after 1 April 2017, GAAR will ensure that artificial avoidance of taxable presence is not likely to remain tax protected for the non-residents.

36. Country By Country – Transfer Pricing: Deferral of application for facilitating better understanding and implementation

The Finance Bill, 2016 has proposed to provide a specific reporting regime in respect of CbC reporting and also the master file. It is also proposed to include essential elements in the Act while remaining aspects can be detailed in rules. The elements relating to CbC reporting requirement and matters related to it are proposed to be included through amendment of the Act in various relevant sections.

Understanding the implications of these provisions and effective implementation of the same will require a lot of efforts on the part of the tax payers as well as Transfer Pricing Officer/Assessing Officers. Also, the CBDT will be required to come out with detailed rules and format to implement these provisions.

Suggestion

It is suggested that the applicability of the said provisions be postponed by one year.

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ABOUT DIRECT TAXES COMMITTEE AND COMMITTEE ON INTERNATIONAL TAXATION OF ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants in India. During its more than six decades of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

The Council of ICAI functions through various Standing and Non-Standing Committees. Direct Taxes Committee and the Committee on International Taxation are amongst the most important non-Standing Committee's of ICAI. The main functions of these Committees is to examine the laws , rules, regulations, circlars, notifications etc. relating to Direct tax and international taxation which may be enacted or issued by the Government from time to time and to send suitable memoranda containing suggestions for improvements in the respective legislation. The Direct Taxes Committee and the Committee on International Taxation are actively involved in the process of formulation of budget by offering pre-budget and post-budget suggestions/ comments to simplify tax laws and their administration for the purpose of making it more responsive to tax payers.

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