POST BUDGET MEMORANDUM, 2012

Direct Taxes

THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA, NEW DELHI

POST BUDGET MEMORANDUM - 2012

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INTRODUCTION

1.0 The Institute of Chartered Accountants of India (ICAI) every year submits Pre-Budget memorandum as well as Post Budget Memorandum. In continuation of the tradition, the ICAI considers it a privilege to submit this Post-Budget Memorandum – 2012 to the Government.

1.1 In this memorandum, certain amendments to the proposals contained in the Finance Bill, 2012 have been suggested with a view to ensure attainment of the declared objectives of the Government.

1.2 The principle of Parliament's legislative competence to make retrospective amendments is well established. At the same time, it may be appreciated that the legislative privilege of making retrospective amendment is coupled with corresponding obligation to make its use in rarest of rare circumstances. The tax payer who is expected to fully abide by law is certainly entitled to know beforehand the tax law by which he would be governed. The State has to conduct itself fairly with its tax payers. The retrospective amendments even when made in most justifying circumstances should not cause undue hardship to the tax payers on account of the provisions being made effective from a prior date. The aforesaid is applicable with greater force to any amendment in procedural law and that is why it is a well-established practice to give effect to such changes prospectively, i.e., with effect from 1st July following the passing of the Finance Bill or some other future date. However, in the Finance Bill, 2012, there are certain amendments in procedural/compliance law which have been made effective retrospectively, which may lead to unnecessary harassment of the tax payer for non-compliance of law at an earlier point of time, in respect of which the enactment has now been made by way of a retrospective amendment. In order to ensure fairness and prevent undue hardship to taxpayers, it may be clarified that disallowances and penal provisions, including levy of fees and interest, on account of non-compliance would not apply in respect of such retrospective amendments. In effect, there should be a blanket waiver on imposition of interest, fees and penalty arising out of non-compliance of a retrospective amendment.

Further, retrospective amendments, even though made to clarify the intent of law, may lead to uncertainty, which will also affect the logical understanding of the tax provisions by tax payers in the past. Therefore, clarifications which are in the nature of imposing additional tax burden or attracting penal provisions should be given effect to prospectively. In any case, retrospective amendments should not affect completed assessments. Further, retrospective amendments to clarify the position of law should be done in the rarest of rare circumstances and that too at the earliest point of time when the issue stems up i.e. at the beginning of the controversy rather than after allowing controversy to reach the highest court of the land.

1.3 We have noted with great satisfaction that the suggestions given by the ICAI in the past have been considered very positively. Certain representations made in the post-budget memorandum of earlier years have formed the basis of amendments proposed in the current Finance Bill. In formulating our suggestions in regard to the Finance Bill 2012, the Direct Taxes Committee and the Committee on International Taxation of the ICAI have 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 Income-tax Act, 1961. We are confident that the suggestions given in this Memorandum shall receive positive consideration. The representations made by the ICAI in the last four years which have resulted in legislative changes are given below to illustrate the positive outcome of such suggestions –

Sl. No.	**In relation to Finance Bill**		**Relevant Issues –** ***Suggestions of ICAI***	**Action taken**
I.	2012	1.	Provision for rectification u/s 154 and appeal u/s 246A in respect of an intimation under section 200A.	Proposal considered in the Finance Bill, 2012.

		2.	Extension of benefit of weighted deduction under section 35(2AB) for a further period of five years.	Proposal considered in the Finance Bill, 2012.
		3.	"Book profit" under section 115JB to be computed based on the net profit as per the accounts prepared under the relevant statute for banking, insurance, electricity companies etc.	Proposal considered in the Finance Bill, 2012.
		4.	Reference to Part III of Schedule VI to be omitted in section 115JB since Revised Schedule VI does not contain Part III.	Proposal considered in the Finance Bill, 2012.
		5.	Removal of cascading effect of dividend distribution tax in multi-tier corporate	Proposal considered in the Finance Bill, 2012.

			structure also.	
		6.	Extension of due date of filing of return of income to 30^{th} November of the assessment year for all assessees who are required to file a transfer pricing report.	Proposal considered in the Finance Bill, 2012.
		7.	Alignment of "specified date" in the Explanation to section 44AB with the "due date" of filing return of income under Explanation 2 to section 139(1).	Proposal considered in the Finance Bill, 2012.
		8.	Age of 60 years for additional benefit to a senior citizen, to be made applicable uniformly in the Act.	Proposal considered in the Finance Bill, 2012.
		9.	Deduction of	Proposal considered in

			expenditure incurred by way of investment in agricultural infrastructure.	the Finance Bill, 2012 by way of provision of weighted deduction in respect of notified agricultural extension projects.
		10.	TCS@1% on sale consideration of immovable property, where the sale consideration is lower than the stamp duty value.	Proposal considered in the Finance Bill, 2012 in modified form. TDS @1% of sale consideration of all immovable property exceeding the specified threshold.
		11.	Consequential amendment in proviso to section 111A(1) on account on increase in rate of short-term capital gains from 10% to 15% w.e.f. 1.4.2009.	Proposal considered in the Finance Bill, 2012

II.	2010	1	Exemption of capital gains in the hands of shareholders consequent to conversion of a company into a LLP - *Amendment in section 47(xiiib).*	Considered in the Finance Act, 2010
III.	No.2 of 2009	1.	Treatment of Advance FBT paid during the Financial Year 2009-10 in view of abolition of FBT – *Advance FBT should be treated as Advance income-tax paid* .	Through Notification this has been implemented
		2.	Conversion of LLPs – *should not be considered as "transfer" for capital gains by inclusion in section 47.*	Considered in Finance Act, 2010

		3.	Computation of deductible profit of SEZ unit u/s 10AA – *amendment to be made retrospective.*	Considered in Finance Act, 2010
		4.	Capital expenditure incurred in the years prior to the year in which specific business has been commenced u/s 35AD – *capital expenditure incurred in earlier years should be considered for deduction in the year of commencement of specific business.*	Considered in the Finance (No.2) Act, 2009
		5.	Deemed income u/s 56(2)(vii) – *this should be included in the definition of income u/s 2(24).*	Considered in the Finance (No.2) Act, 2009
		6.	Value considered for deemed income u/s	Considered in the Finance (No.2) Act,

			56(2)(vii) – *such deemed value should be considered as "cost of acquisition" u/s 49 for subsequently computing capital gains from transfer thereof.*	2009
		7.	Valuation as regards deemed income u/s 56(2) – *if assessee disputes the value the Assessing Officer should be able to make reference to Valuation Officer.*	Considered in Finance Act, 2010
		8.	Deemed income u/s 56(2)(vii) – *trading assets should be excluded.*	Considered in Finance Act, 2010 for exclusion of the property of the nature of trading assets of the receiver.
		9.	Interest on Compensation u/s 56(2)(viii) – *wrong*	Considered in the Finance (No.2) Act, 2009.

			reference to section 145A(2) should be rectified to section 145A(b).	
		10.	Exclusion of anonymous donation from taxability u/s 115BBC – *instead of 5% of total income the relaxation should be of 5% of gross receipts.*	By Finance (No.2) Act, 2009, it has been made 5% of total donations.
IV.	2008	1.	Computation of Book Profit u/s 115JB – *exclusion of deferred tax assets if credited to the Profit & Loss Account.*	Considered in Finance Act, 2008.
		2.	Liability of AOPs and BOIs for TDS u/s 194C – *only if the concerned AOPS are liable to Tax Audit u/s*	Considered in Finance Act, 2008.

			44AB.	
		3.	Notice deemed to be valid just because of the assessee's appearance or co-operation u/s 292BB – *if the assessee objects as regards validity of the Notice during the course of assessment proceedings, this section should not be applied.*	Considered in Finance Act, 2008.

We request the CBDT to also consider our suggestions given in Part II of our Pre-Budget Memorandum as well, (reproduced in pages 76-106 of this memorandum) in order to reduce/minimize litigations.

1.4 In this memorandum, firstly an executive summary of our suggestions on the specific clauses of the Finance Bill, 2012 relating to income-tax have been given. The detailed suggestions are given thereafter.

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

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POST-BUDGET MEMORANDUM - 2012

EXECUTIVE SUMMARY

I SUGGESTIONS ON PROPOSALS CONTAINED IN THE FINANCE BILL, 2012

1. Clause 2 - Rates of Taxes

The basic exemption limit of resident women below the age of 60 years may be increased to Rs.2,25,000.

The basic exemption limit of resident individuals of the age of 60 years or more at any time during the previous year may be increased to Rs. 3,00,000.

2. Clause 4– Amendment in Section 9(1)

(a)(i) It is suggested that Explanations 4 and 5 to section 9(1)(i) and other consequential amendments in sections 2(14) and 2(47) may be given effect to prospectively, i.e. with effect from A.Y. 2013-14, to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for –

(1) non-payment of tax by the person whose income is deemed to accrue or arise in India and

(2) non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.

(ii) Further, it is suggested that the words "derives directly or indirectly, its value substantially from the assets located in India" may be subject to different interpretations. The scope of "indirectly" may be defined to clarify the true intent of law. Further, the term "substantially" also need to be defined by specifying exact parameters like a specific percentage, as in section 2(32) of the Income-tax Act, 1961 or clause 314(185) of the Direct Taxes Code Bill, 2010 to avoid scope for any disagreements / litigation.

(iii) Furthermore, the liability to tax in India should be restricted to the extent of value derived from the assets located in India and not the value of the entire transaction.

(iv) The definition of royalty under section 194J may be delinked from the definition of royalty in section 9(1)(vi). There should be an independent definition of royalty under section 194J, since otherwise purchase and sale of software may fall within the definition of royalty, whereas the intent of proposed royalty definition is to cover exploitation of intangible assets .

(b) It is suggested that Explanations 4, 5 and 6 should be inserted with effect from 1.4.2013 and made applicable from A.Y.2013-14 onwards to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for –

(i) non- payment of tax by the person whose income is deemed to accrue or arise in India and

(ii) non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.

(c) It is suggested that the proposed Explanation 6 to section 9(1)(vi) may be suitably re-worded.

3. Clause 5-Amendment in section 10(10D)

Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications may be made accordingly.

4. Clause 3(iii), Clause 15 and Clause 16 - Amendment in sections 2(19AA)(iv), 47(vii) and 49

a) Since, the amendments are clarificatory in nature and are proposed to remove the conditions which were impossible to fulfill, it is suggested to make them applicable with retrospective effect i.e. from the date when the above conditions were inserted in the said sections i.e. for Section 47 (vii) with effect from 1 April 1967 and for Section 2(19AA) with effect from 1 April 2000.

b) Section 2(1B)(i) may be amended appropriately to provide that all the property of the amalgamating company or companies (other than assets like shares, debentures etc. held by any amalgamating company or

companies in another amalgamating company or companies) before amalgamation becomes the property of the amalgamated company by virtue of amalgamation. Corresponding amendment may also be made in Clause (ii) of section 2(1B).

5. Clause 11 and Clause 77 - Amendment in Section 40 and Section 201.

The provisions of section 40(a)(ia) and section 201(1) may be amended retrospectively with effect from 1.4.2005 in order to clarify the real intent of law and to remove hardship, thereby reducing further litigations.

The later part of the proposed second proviso may be suitably amended to provide that it shall be deemed that the assessee has deducted tax in the relevant previous year and paid the tax on such sum on or before the due date of furnishing the return of income.

6. Clauses 13 and 14 – Amendment in sections 44AB and 44AD – Consequential amendment required in section 47(xiiib)

The limit of total sales, turnover or gross receipts in the business of a company for availing the benefit under section 47(xiiib) on conversion to an LLP may be suitably increased to Rs.1 crore, in line with the limits in section 44AB and section 44AD. In fact, with a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit under section 47(xiiib).

7. Clause 14 – Amendment in section 44AD

The provisions of sub-section (6) of section 44AD should be made effective from A.Y.2013-14, since the persons earning income in the nature of commission or brokerage and persons carrying on agency business who had opted for presumptive taxation for A.Y.2011-12 and A.Y.2012-13 in the absence of specific exclusion in the definition of "eligible assessee" or "eligible business" would face genuine hardship on account of such retrospective amendment.

Further, instead of inserting sub-section (6), the definition of "eligible business" be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.

8. Clause 19 – Insertion of new section 54GB

a) The benefit under section 54GB may be extended to long-term capital gains on sale of any capital asset which is invested in the equity of a new start-up SME company for purchase of new plant and machinery within the prescribed time.

b) Investment in existing SME company may also be considered for the purpose of such exemption.

c) Further, investment in LLP which satisfies the condition of SME enterprises may also be permitted, subject to conditions as may be necessary. Restrictive clauses may be inserted in line with the appropriate clauses of the proviso to section 47(xiiib).

d) The restricted time limit for acquiring new plant and machinery will create difficulties and, therefore, it is

suggested that the SME company may be allowed to make such investment in new plant and machinery within a period of 2 years from the date on which the assessee makes the investment in its equity shares.

e) The period of 5 years for retaining the equity shares may be reduced to 3 years, in line with the requirement under section 54EC. Suitable exceptions for takeover/ merger/amalgamations etc. may also be provided.

f) Similarly, lock-in-period for plant and machinery acquired by the SME company may be reduced from 5 years to 3 years.

g) It may be clarified that the net consideration after deduction of tax at source @1% may be required to be invested, so that there is no cash flow mismatch.

h) ***In case of a Sale of joint property , the condition regarding holding of more than 50% of the share capital of the SME company by the assessee should be deemed to have been fulfilled if the co-owners of the said property hold more than 50% of the Share Capital of the SME company.***

9. Clauses 21 and Clause 22 - Amendment in Section 56 and Section 68

(i) Clause (viib) in section 56(2) may be deleted. Alternatively, section 68 may be amended to exclude share premium. In such a case, the definition of income under section 2(24) should be amended to include any sum of money referred to in section 56(2)(viib).

(ii) A proviso similar to the proviso to section 56(2)(viia) should be incorporated in section 56(2)(viib) as well.

Further, the proviso should also cover transactions not regarded as transfer under sections 47(vi) and 47(vib).

(iii) The Valuation rules should be similar lines to rules prescribed by the Reserve Bank of India on the basis of Discounted Cash Flow method to permit capturing of future potentials in the valuation.

(iv) Valuation Report from an `*Accountant'* may be admissible so as to justify higher value of a share and the Share Premium on the basis of value of intangible assets , Land and Building etc. Higher valuation of Land and Building may also be supported by an Approved Valuer under the Wealth Tax Act.

10. Clause 21 – Amendment of section 56(2)(vii)

(i) The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 should not be attracted once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient.

(ii) Lineal descendents of brothers and sisters of self and spouse may also be included in the definition of "relative".

11. Clause 22 – Amendment in section 68

Since foreign investments are regulated by Reserve Bank of India through FEMA, it is suggested that the proposed clause be amended be made applicable for resident investors only like section 56 (viib).

12. Clause 25 – Amendment of section 80D

It is suggested that section 80D be appropriately amended to provide for a deduction of Rs.5,000 for preventive health check-up of any member of the family, which is in addition to the existing limits under that section for medical insurance premium paid.

13. Clauses 27 and 28 – Amendment in sections 80G and 80GGA

It may be clarified as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or aggregate contributions to an institution or to all institutions covered under sections 80G(2) and section 80GGA(2), respectively.

Further, since deductions under sections 80GGB and 80GGC are also in respect of donations, the above limit should be made applicable in respect of such contributions to political parties and electoral trusts as well, to dissuade cash payments.

14. Clause 30 - Amendment to Section 80TTA

Interest on time deposits may also be included within the scope of section 80TTA.

15. Clause 31 - Amendments to Sections 90 and 90A

It is suggested that the aforesaid amendments should be deleted.

16. Clause 34 - Amendment to Section 92B

(i) It is suggested to substitute the definition of "international transaction" prospectively w.e.f. 1.4.2013 so that persons who have entered into such transactions in the past, which are now affected due to the proposed changes, do not face undue hardship on account of penal consequences which are attracted due to non-maintenance of prescribed books of account and non-furnishing of report of an accountant and any other associated requirement.

(ii) Transfer Pricing provisions should not be made applicable to marketing intangibles, inter corporate guarantees etc unless a payment is made as it would increase litigation.

(iii) Due to lack of comparables in case of intangibles, appropriate safe harbor provisions may be introduced. Though the enabling provisions for making rules for safe harbour have been conferred on the Central Board of Direct Taxes three years back vide Finance (No.2) Act, 2009, the rules in this regard are yet to be notified. It is suggested that the rules may be notified at an early date so that the tax payers are able to avail the benefit intended by the legislature.

(iv) Further, the requirement of obtaining a Valuation Report from an accountant may also be provided for.

17. Clause 35 - Insertion of Section 92BA

1) Transfer pricing provisions should not be made applicable in respect of domestic transactions, particularly in respect of transactions in the nature of

expenditure under section 40A(2). In any case, payment of director's remuneration in compliance with Schedule XIII of the Companies Act, 1956 and partners remuneration within the limits prescribed under section 40(b)(v) should not be included in the scope of "specified domestic transaction". In case, such provisions are to be made applicable to domestic transactions, the threshold limit may be increased to atleast Rs.50 crores in respect of transactions covered under section 40A(2)(b).

Alternatively, the amount of expenditure allowed as deduction in the hands of one enterprise as per the arm's length price determined should be treated as income of the other enterprise, and vice versa i.e. correlative adjustments should be allowed. Also, Advance Pricing Agreements should apply for domestic transactions as well.

2) The Finance Bill proposes to make transfer pricing provisions applicable to specified domestic transactions. As per the proposal, the existing Transfer pricing provisions would be applicable to domestic transactions covered by sections 40A(2), 80-IA(8)/(10) and 10AA and that domestic concerns would have to comply with the rigours of Rule 10D. This would mean that the provisions of section 92CA(1) w.r.t. reference to the TPO would also apply. The existing administrative machinery of Transfer Pricing (i.e. TPO and DRP) are already over burdened and any further workload without a corresponding increase in the infrastructure will jeopardise the quality of the work.

3) The penalty for non-disclosure in the certificate by Accountant should be much lower and not 2% of the value of international transaction.

18. Clause 36 – Amendment in section 92C

It is suggested that as it is possible that there may be more than one arm's length margin possible and to bring the Indian TP provisions more in line with international practices -

(1) The concept of arm's length range like the inter quartile range instead of specifying the tolerance band for each industry may be introduced.

(2) Alternately, the existing provision on 5% tolerance band should be extended till such time the government announces the specific industry percentages as was provided by the Finance Act, 2011

(3) At the minimum, the provision of 5% as it existed before the amendment made by Finance Act, 2011 should be extended for the year April 2011- March 2012 for all taxpayers.

19. Clause 39 - Advance Pricing Agreements (APAs)

(1) In line with the recommendations of the Parliamentary Standing Committee on the Direct Taxes Code Bill, 2010, it is suggested that an independent agency appointed by the CBDT consisting of technical and judicial Members, should be entrusted with task of framing APAs, specifying the manner in which ALP is to be determined in respect of an international transaction. The independent agency will advise the Board on APAs in

order to ensure that the APAs reflect current commercial practices.

(2) An appropriate guidance to the assessees as well as to the TPOs is required, laying the appropriate steps and filtration process under all the recommended methods for transfer pricing by way of case studies which is internationally prevalent.

(3) A mechanism for a review of an APA on account of change in law or facts should be formulated.

(4) Appropriate procedure for withdrawal of application made by a tax-payer for APAs should be provided for in the scheme.

(5) The APAs should also provide for renewal of APAs after the expiry of initial period of applicability, where the business model as well as the law remains the same.

(6) Further, APAs should include a clause to provide that if any DTAA is entered into in future, and the provisions of the DTAA are more beneficial, the same would be applicable to the tax-payer.

(7) For bilateral APA, the APA and MAP negotiation between the two Competent Authorities should commence simultaneously.

20. Clause 46 – Amendment in section 115JB

Clauses (b) and (e) of Explanation 1 may be deleted with effect from 1st April, 2012.

21. Clause 47 – Amendment in section 115JC

It is suggested that the provisions should be amended appropriately to clarify that the specified persons are entitled to set-off AMT credit even when their adjusted total income falls below Rs. 20 lakhs in the year of set-off.

Further, even if the tax payer has discontinued the business, he should be allowed to set-off AMT credit, in line with the set-off of business losses allowed even after discontinuance of business.

The benefit of carry forward and set-off of AMT credit should be permitted also in case of conversion of sole proprietorship to firms and LLPs.

22. Clause 54 – Amendment in section 115U

Section 115U may be suitably amended to clarify the correct intention of law as laid down in the Explanatory Memorandum i.e. taxability of income in the hands of the investor and deduction of tax at source from such income by the VCC/VCF and non-applicability of dividend distribution tax in the hands of the VCC/VCF.

23. Clauses 61 and 62 - Amendment in Section 147 read with section 149

(i) It is suggested that the Explanation proposed to be inserted after section 149(3) be omitted so that effect of this provision is made applicable with effect from a prospective date. Alternatively, it may be provided that assessments for A.Y.2007-08 or thereafter may be

reopened on the basis of the amended provisions of section 149(3).

(ii) Reassessment proceedings initiated for a period prior to six years should be restricted to only income arising out of assets located outside India.

(iii) Further, appropriate amendments may be made to address the genuine hardship which assessees who are subject to presumptive tax provisions may face on account of such provision.

(iv) The term "financial interest" may be defined to ensure clarity.

(v) Giving way forward for the accountability of the revenue, the provisions of section 147 deeming income to have escaped assessment in the hands of a resident having an asset located outside India may be replaced by provisions vesting the onus on the Assessing Officer to provide that the income from such foreign asset has actually escaped assessment.

24. Clause 71 – Amendment of section 194J

(i) Section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.

(ii) Section 40(a)(ia) be amended to include within its scope payment to a director on which tax deductible at source has not been deducted.

25. Clause 73 – Introduction of new section 194LAA

(1) **The requirement to deduct tax at source may be on the transferee or the payee, as the case may be.**

(2) **Since the main objective of this provision is to have a reporting mechanism in the real estate sector, deduction of tax on the actual sale consideration will serve the said requirement. Therefore, the provisions of adopting stamp valuation may be removed.**

(3) **Assessing Officers may be empowered to give exemption from deduction on the assessee furnishing declaration that capital gains exemption would be availed by investing as per the requirements of section 54, 54F, 54EC etc. He may be authorised to issue a non-deduction certificate specifically for this purpose.**

(4) **Appropriate clarifications be issued in respect of property jointly owned, part payments made in respect of property before 1st October, 2012 etc. Given the plethora of issues, the provisions may be re-considered before enactment.**

26. Clause 76 – Amendment in section 197A(1C)

This probably results in unintended hardship to these senior citizens and hence, it is suggested that the proposed amendment u/s 197A should also be effective 01 April 2012 in line with the amendments u/s 80D and 80DDB.

Form 15H may also be amended requiring declaration under section 197A(1C) to be made by an individual who is of the age of sixty years or more at any time during the previous year rather than sixty five as mentioned presently in the Form.

27. Clauses 67, 68 & 89 – Provision for rectification and appeal of intimation under section 200A

The provisions amending sections 154, 156 and 246A to provide for rectification and appeal of intimation under section 200A and deeming such intimation as notice of demand may be given effect to retrospectively.

28. Clause 81 – Amendment of section 209

Interest under section 234C may be waived off in such cases. In the alternative, the liability to pay interest should arise only in respect of instalments which fall due after such non-deduction or non-collection.

29. Clause 90 - Provisions Related to Dispute Resolution Panel (DRP)

The enhancement powers given to the Dispute Resolution Panel (DRP) will create more legal disputes than resolve. The primary task of finding a dispute is that of the AO and the DRP is supposed to resolve the dispute. The proposed powers will lead to creation of disputes at the DRP level.

30. Clause 96 – Insertion of section 271AAB

Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied only under clause (c) of this sub-section, and not in respect of cases covered under clauses (a) and (b).

31. Clause 98 – Insertion of section 271H

(i) Sub-section (3) may be amended to provide that penalty provisions under section 271H would not be attracted if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he has delivered or caused to be delivered the statement referred to in section 200(3) or the proviso to section 206C(3) before the expiry of due date of filing of return of income of the previous year in which the tax was so deducted or collected, irrespective of the quarter to which the tax relates.

(ii) Penalty may be prescribed having regard to quantum of default and the period of delay, and no discretion may be given to the Assessing Officer in this regard. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.

32. Provision to be incorporated in the Finance Bill, 2012 to incorporate deduction in respect of investments made in Rajiv Gandhi Equity Savings scheme

A clause may be incorporated in the Finance Bill, 2012 to give effect to the above proposal.

Further, while giving effect to the above proposal, the benefit of deduction may be extended to existing retail investors also, in order to achieve the intended objective of encouraging continued flow of savings in financial markets.

33. General Anti Avoidance Rule (GAAR)

1) **All the other recommendations given by the Parliamentary Standing Committee in respect of GAAR provisions under the Direct Taxes Code Bill, 2010 may also be considered with regard to the relevant provisions of GAAR in the Income-tax Act, 1961.**

2) **Applicability of GAAR provisions may be restricted only to instances of tax avoidance, as against legitimate tax planning, i.e., where the tax benefit is not within the intended scope of the Indian Income Tax Act, 1961; rather than covering all cases involving a tax benefit.**

3) **The constitution of the Approval Panel may include members from judiciary bodies, independent of the Income Tax Department. Objective guidelines, in the form of Notifications or Circulars may also be provided to illustrate cases where the Revenue Authorities will, and importantly, will not invoke GAAR.**

4) **The initial burden of proof must be placed on the Revenue Authorities, to prima facie make out a case for invoking GAAR.**

5) **Appropriate thresholds must be prescribed in order to prevent GAAR provisions being applied to cases which do not cross such thresholds. The thresholds may be defined with reference to any or more of the following:**

    a. **Taxable income of the taxpayer involved,**

    b. **Quantum of income or expense involved in the transaction,**

    c. **Quantum of tax benefit or tax rate differential involved.**

6) **It is suggested that the existing provisions of sections 245N to 245V relating to Advance Ruling be extended to any arrangement or transaction to be entered into by Residents with Residents also. It may also be provided that if AAR approves any arrangement or transaction the provisions relating to GAAR (Sections 95 to 102) will not apply.**

7) **Transactions which have passed the specific anti-avoidance tests should not be subject to the rigors of GAAR. A specific exemption may be provided in this regard.**

II. OTHER SUGGESTIONS

1. Section 43A - Exchange fluctuation loss due to sharp fall in Rupee value

It is suggested that Section 43A be amended to allow Capitalization of such foreign exchange loss even for domestically acquired asset.

2. Investment in Section 80CCF

Deduction under section 80CCF may be extended for the financial year 2012-13 and subsequent years and the limit may be suitably enhanced.

POST- BUDGET MEMORANDUM – 2012

I SUGGESTIONS ON PROPOSALS CONTAINED IN THE FINANCE BILL, 2012

1. Clause 2 - Rates of Taxes

The basic exemption limit of individuals/HUF/AOP/BOI and every artificial juridical person is proposed to be increased by Rs.20,000 i.e., from Rs.1,80,000 to Rs.2,00,000.

However, the basic exemption limit for resident women of the age of less than 60 years is proposed to be increased by only Rs.10,000 i.e., from Rs.1,90,000 to Rs.2,00,000.

Further, there is no proposal to increase the basic exemption limit for resident individuals of the age of 60 years or more, which will continue to remain at Rs.2,50,000.

The rationale given by the then Finance Minister when introducing a special rebate of Rs.5,000 under erstwhile section 88C for women in the year 2001-02 was that it was a token of appreciation and recognition of women as productive contributors to the economy.

Likewise, the rebate of Rs.20,000 under erstwhile section 88B was an expression of gratitude to the contribution made by senior citizens during active years and taking into account the possible hardships that they may face in the advanced years of their life.

On account of these reasons continuing to hold good even now, it is suggested that a higher basic exemption limit of Rs.2,25,000 be given to women assesses. Further, the basic exemption limit of resident individuals of the age of 60 years or more may be appropriately increased to Rs.3,00,000.

Suggestions

The basic exemption limit of resident women below the age of 60 years may be increased to Rs.2,25,000.

The basic exemption limit of resident individuals of the age of 60 years or more at any time during the previous year may be increased to Rs. 3,00,000.

2. Clause 4 – Amendment in Section 9(1)

(a) The Finance Bill, 2012 proposes to introduce clarificatory amendments in sections 2(14), 2(47), 9(1)(i) and 195(1) to tax gains from off-shore transactions where the value is attributable to the underlying assets located in India. These amendments reassert the source rule of taxation wherein the state where the actual economic nexus of income is situated has a right to tax the income irrespective of the place of residence of the entity deriving income. These provisions are proposed to be introduced retrospectively with effect from 1.4.1962.

Under section 9(1)(i), all income accruing or arising, whether directly or indirectly, inter alia, through the transfer of a capital asset situated in India, would be deemed to accrue or arise in India.

Explanation 4 is proposed to be inserted to clarify that "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of". Effectively, if the income has accrued by means of or by reason of or in consequence of a transfer of a capital asset situated in India, the same would be deemed to accrue or arise in India.

Explanation 5 is proposed to be inserted in section 9(1)(i) to clarify that if any asset or capital asset being any share or interest in a company or entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India, such asset or capital asset shall be deemed to be and shall always be deemed to have been situated in India. This amendment is proposed retrospectively from 1st April, 1962.

Suggestions

(i) ***It is suggested that Explanations 4 and 5 to section 9(1)(i) and other consequential amendments in sections 2(14) and 2(47) may be given effect to prospectively, i.e. with effect from A.Y. 2013-14, to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for –***

a. ***non-payment of tax by the person whose income is deemed to accrue or arise in India and***

b. ***non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.***

(ii) ***Further, it is suggested that the words "derives directly or indirectly, its value substantially from the assets located in India" may be subject to different interpretations. The scope of "indirectly" may be defined to clarify the true intent of law. Further, the term "substantially" also need to be defined by specifying exact parameters like a specific percentage, as in section 2(32) of the Income-tax Act, 1961 or clause 314(185) of the Direct Taxes Code Bill, 2010 to avoid scope for any disagreements / litigation.***

(iii) ***Furthermore, the liability to tax in India should be restricted to the extent of value derived from the assets located in India and not the value of the entire transaction.***

(iv) ***The definition of royalty under section 194J may be delinked from the definition of royalty in section 9(1)(vi). There should be an independent definition of royalty under section 194J, since otherwise purchase and sale of software may fall within the definition of royalty, whereas the intent of proposed royalty definition is cover exploitation of intangible assets.***

(b) Explanation 4 is proposed to be inserted in section 9(1)(vi) to include within the scope of definition of royalty, transfer of all or any right to use a computer software (including granting of a licence).

In effect, where the computer software is used for the purpose of a business or profession carried on in India, or for making or earning any income from any source in India, the payment for the same to the non-resident/foreign company would be treated as royalty income which is deemed to accrue or arise in India. Consequently, the requirement of deduction of tax under section 195 would arise. If tax is not deducted at source, the assessee would be deemed to be an assessee-in-default, and the penal consequences under the Income-tax Act, 1961 would be attracted.

Explanation 5 is proposed to be inserted in section 9(1)(vi) to clarify that the royalty includes and has always included consideration in respect of any right property or information, whether or not the possession or control of such right, property or information is with the payer, such right, property or information is used directly by the payer or the location of such right, property or information is in India.

Explanation 6 is proposed to be inserted in section 9(1)(vi) to clarify that the expression "process" includes and shall be deemed to have always included transmission by satellite, cable, optic fibre or by any other similar technology, whether or not such process is secret.

These Explanations are proposed to be inserted with retrospective effect from 1st June, 1976.

Insertion of the Explanations with retrospective effect from 1st June 1976 would cause undue hardship to the payer and the payee, since the payer would have to face the penal consequences and disallowance for non-deduction of tax at source under section 195 and the payee would be subject to *additional tax burden consequent to applicability of deeming provisions under section 9(1)(vi).*

Suggestions

Therefore, it is suggested that these Explanations should be inserted with effect from 1.4.2013 and made applicable from A.Y.2013-14 onwards to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for-

(i) ***non- payment of tax by the person whose income is deemed to accrue or arise in India and***

(ii) ***non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.***

(c) Explanation 6 is proposed to be inserted in section 9(1)(vi) to clarify that the expression "process" includes and shall be deemed to have always included transmission by satellite, cable, optic fibre or by any other similar technology, whether or not such process is secret.

It appears that this amendment, clarifying the meaning of term 'royalty', was done in connection with satellite payments, transponder payments, etc. However, the amendment, in its current form can have far reaching impact especially in connection with the withholding tax provisions u/s 194J.

The amendment, in its current form and shape, also covers routine telephone/ cellular/ internet services provided by various service providers**.** In other words, the amendment would result in the payer being under an obligation to withhold taxes u/s 194J of the Act (as 'royalty') for payments for routine telephone, cellular and internet service provided (such as payments to MTNL/ BSNL/ various cellular service providers and internet service providers).

This probably does not seem to be intended especially because in such a case, there would be no line of distinction between 'services' and 'royalty'. Further, the retrospective amendments may trigger section 40(a)(ia) disallowances for the assessee in existing cases as well as penal consequences for non-deduction of tax at source under section 194J.

Suggestions

It is suggested that the proposed Explanation 6 to section 9(1)(vi) may be suitably re-worded.

3. Clause 5 - Amendment in section 10(10D)

Section 10(10D) was amended vide Finance Act, 2003, according to which in case any sum is received under an insurance policy issued on or after 01.04.2003 in respect of which the premium payable for any of the years during the terms of the policy exceeds 20% of actual capital sum assured, the same would be exigible to income-tax. The Finance Bill, 2012 has reduced the said percentage limit from 20% to 10%, in respect of policies issued on or after 1.4.2013.

Suggestion

Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications may be made accordingly.

4. Clause 3(iii), Clause 15 and Clause 16 - Amendment in sections 2(19AA)(iv), 47(vii) and 49

The Finance Bill 2012 has proposed amendment in Section 47(vii) and Section 2(19AA) of the Income-tax Act:

As per the Explanatory Memorandum to the Finance Bill 2012, the purpose of aforesaid amendments is as under:

In a case where a subsidiary company amalgamates into the holding company, it is not possible to satisfy one of the conditions i.e. the amalgamated company (the holding company) issues shares to the shareholders of the amalgamating company (subsidiary company), since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself.

Similarly, in the case of a demerger there is a requirement under section 2(19AA)(iv) that the resulting company has to issue the shares to the shareholders of the demerged company on a proportionate basis. However, it is not possible to satisfy this condition where the demerged company is a subsidiary company and the resulting company is the holding company.

Therefore, it is proposed to amend the provisions of section 47(vii) and 2(19AA) so as to exclude the requirement of issue of shares to the shareholder where such shareholder itself is the amalgamated company or the resulting company.

Further, section 2(1B) of the Income-tax Act, 1961 provides for the definition of "amalgamation" which, *inter alia,* states that all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of amalgamation.

This may lead to hardship in a case where the two amalgamating companies have cross holdings. In such a case, on amalgamation the shares held by the amalgamating companies in each other are cancelled out and thus the requirement of transfer of all assets to the amalgamated company will never be fulfilled. This seems to be an inadvertent error in drafting and thus needs to be amended appropriately.

Suggestions

(a) ***Since, these amendments are clarificatory in nature and are proposed to remove the conditions which were impossible to fulfill, it is suggested to make them applicable with retrospective effect i.e. from the date when the above conditions were inserted in the said sections i.e. for Section 47 (vii) with effect from 1st April 1967 and for Section 2(19AA) with effect from 1 April 2000.***

(b) ***Section 2(1B)(i) may be amended appropriately to provide that all the property of the amalgamating company or companies (other than assets like shares, debentures etc. held by any amalgamating company or companies in another amalgamating company or***

companies) before amalgamation becomes the property of the amalgamated company by virtue of amalgamation. Corresponding amendment may also be made in Clause (ii) of section 2(1B).

5. Clause 11 and Clause 77 - Amendment in Section 40 and Section 201

The proposed amendment in section 40(a)(ia) provides that disallowance under that section would not be attracted where the tax deductible at source has been paid by the resident payee and he has furnished his return of income disclosing such payment within the prescribed time. This amendment is proposed to be made effective only from A.Y.2013-14.

Section 201 is also proposed to be amended with effect from 1st July, 2012 to provide that in such a case, the payer would not be treated as an assessee-in-default.

It is suggested that since this a genuine difficulty being faced by the payer since the introduction of section 40(a)(ia) w.e.f. 1.4.2005, therefore, this provision should be given effect to retrospectively with effect from that date of introduction of the provision, so that in cases where the tax was paid directly by the payee, there should be no disallowance of the expenditure in the hands of the payer. Further, above all, since the amendment clarifies the real intent of law, it should be given effect to retrospectively.

Also, since disallowance under section 40(a)(ia) would be attracted when tax is not deducted at source during the relevant previous year, therefore, a provision needs to be incorporated to provide that in such cases where tax is paid by the resident payee, the payer is deemed to have deducted at source *at the time when it was so deductible.*

Suggestion

***The provisions of section 40(a)(ia) and section 201(1) may be amended retrospectively with effect from 1.4.2005 in order to clarify the real intent of law* and to remove hardship, thereby reducing further litigations.**

The later part of the proposed second proviso may be suitably amended to provide that it shall be deemed that the assessee has deducted tax <u>in the relevant previous year</u> and paid the tax on such sum on or before the due date of furnishing the return of income.

6. Clauses 13 and 14 – Amendment in sections 44AB and 44AD – Consequential amendment required in section 47(xiiib)

The turnover limit for compulsory tax audit of accounts under section 44AB as well as for presumptive taxation under section 44AD is proposed to be raised from Rs. 60 lakhs to Rs. 1 crore, in the case of persons carrying on business.

However, no corresponding amendment has been made in the limit of total sales, turnover or gross receipts in the business of a company for availing the benefit under section 47(xiiib) on conversion to an LLP.

The existing section 47 (xiiib) provides that no capital gains tax is payable on conversion of a private limited or unlisted public company into LLP subject to certain conditions. Proviso (e) states that this provision will not apply if the total sales, turnover or gross receipts in the business of any of the three preceeding years exceed Rs. 60 lacs. The turnover limit may be increased to Rs.1 crore to bring it in line with the amendments which are proposed u/s 44AB and 44AD where the turnover limit is being increased from Rs. 60 lacs to Rs.1 crore.

In fact, since this is an amendment to facilitate conversion of private limited companies and unlisted companies into LLPs, ideally, there should be no restriction on the turnover to avail the benefit of section 47(xiiib).

Suggestion

The limit of total sales, turnover or gross receipts in the business of a company for availing the benefit under section 47(xiiib) on conversion to an LLP may be suitably increased to Rs.1 crore, in line with the limits in section 44AB and section 44AD. In fact, with a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit under section 47(xiiib).

7. Clause 14 – Amendment in section 44AD

Sub-section (6) is proposed to be inserted with retrospective effect from 1st April, 2011 to clarify that the presumptive tax provisions under section 44AD are not applicable to, *inter alia*, persons earning income in the nature of commission or brokerage or persons carrying on an agency business.

Since the definition of "eligible business" under section 44AD does not exclude the above businesses, such persons were eligible for opting for presumptive taxation under section 44AD subject to fulfilment of the conditions prescribed therein, for the assessment years 2011-12 & 2012-13. Consequently, they were exempt from maintaining books of accounts and getting the same audited. Accordingly, the above persons who have opted for presumptive taxation in those years were not maintaining books of account under section 44AA.

Therefore, these persons would face genuine hardship if the benefit of presumptive taxation is withdrawn retrospectively with effect from A.Y.2011-12, since they would not have maintained any books of account. Thus, it is suggested that this clarificatory amendment be given prospective effect regarding these two businesses.

Further, the proposed amendment apparently seems to exclude the applicability to persons carrying on profession, agency business and earning commission or brokerage. It is possible that such persons have other businesses eligible for presumptive taxation under section 44AD. Therefore, it is suggested that the definition of "eligible business" be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.

Suggestion

The provisions of sub-section (6) of section 44AD should be made effective from A.Y.2013-14, since the persons earning income in the nature of commission or brokerage and persons carrying on agency business who had opted for presumptive taxation for A.Y.2011-12 and A.Y.2012-13 in the absence of specific exclusion in the definition of "eligible assessee" or

"eligible business" would face genuine hardship on account of such retrospective amendment.

Further, instead of inserting sub-section (6), the definition of "eligible business" be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.

8. Clause 19 – Insertion of new section 54GB

New section 54GB is proposed to be inserted to exempt long-term capital gains on transfer of a residential property, being a house or a plot of land, owned by an individual or HUF, if the net consideration on sale of property, is invested in equity of a new start-up SME company in the manufacturing sector which is utilised by the company to purchase new plant and machinery.

Since this proposal has been introduced with a view to incentivise investment in the Small and Medium Enterprises (SME) in the manufacturing sector as per the National Manufacturing Policy announced by the Government in 2011, the benefit of exemption under section 54GB should not be restricted to capital gains from sale of residential house and plot of land alone, but should be extended to long term capital gains derived from other capital assets also.

This exemption under proposed section 54GB can be claimed subject to the following conditions.

(i) The Investee company should qualify as a Small or Medium SME under the Micro, Small and Medium Enterprises Act, 2006.

(ii) The company should be engaged in the business of manufacture of an article or a thing.

(iii) SME company should be incorporated within the period from 1st of April of the year in which capital gain arises to the assessee and before the due date for filing the return by the assessee u/s 139 (1).

(iv) The assessee should hold more than 50% of the share capital or the voting right after the subscription in the shares of a SME company. Sometimes in case of capital intensive SME , a single co-owner may not be able to fund the said SME from his own share of sale proceeds of the property sold which will prevent formation of a new SME so as to achieve the desired objects.

(v) The assessee will not be able to transfer the above shares for a period of 5 years. It may be noted that the lock-in period under section 54EC is only 3 years.

(vi) The company will have to utilize the amount invested by the assessee in the purchase of new plant and machinery within a period of one year from the date of subscription in equity shares of an eligible company. If the entire amount is not so invested before the due date of filing the return of income by the assessee u/s 139, then, the company will have to deposit the amount in the scheme to be notified by the Central Government.

(vii) The above new plant and machinery acquired by the company cannot be sold for a period of 5 years.

(viii) The above scheme of exemption granted in respect of capital gains on sale of residential property will remain in force up to 31.3.2017.

Suggestions

It is suggested:

a) The benefit under section 54GB may be extended to long-term capital gains on sale of any capital asset which is invested in the equity of a new start-up SME company for purchase of new plant and machinery within the prescribed time.

b) Investment in existing SME company may also be considered for the purpose of such exemption.

c) Further, investment in LLP which satisfies the condition of SME enterprises may also be permitted, subject to conditions as may be necessary. Restrictive clauses may be inserted in line with the appropriate clauses of the proviso to section 47(xiiib).

d) The restricted time limit for acquiring new plant and machinery will create difficulties and, therefore, it is suggested that the SME company may be allowed to make such investment in new plant and machinery within a period of 2 years from the date on which the assessee makes the investment in its equity shares.

e) The period of 5 years for retaining the equity shares may be reduced to 3 years, in line with the

requirement under section 54EC. Suitable exceptions for takeover/ merger/ amalgamations etc. may also be provided.

f) ***Similarly, lock-in-period for plant and machinery acquired by the SME company may be reduced from 5 years to 3 years.***

g) ***It may be clarified that the net consideration after deduction of tax at source@1% may be required to be invested, so that there is no cash flow mismatch.***

h) ***In case of a Sale of joint property , the condition regarding holding of more than 50% of the share capital of the SME company by the assessee should be deemed to have been fulfilled if the co-owners of the said property hold more than 50% of the Share Capital of the SME company.***

9. Clause 21 and Clause 22 - Amendment in Section 56 and Section 68

It is proposed to insert clause (viib) in section 56(2) to provide that if the consideration for shares is in excess of the fair value of the shares, the aggregate consideration received in excess of the fair value determined as per method prescribed or substantiated by the company to the Assessing Officer based on the value of its assets, would be taxable as the income of a closely held company.

It is suggested that the objective of taxing credits in the books of a closely held company is proposed to be achieved by amendment of section 68. Section 68 is proposed to be amended to bring to tax, amounts credited as share application money, share capital and share premium in the books of a closely held company, unless the company is able to explain to the satisfaction of the Assessing Officer, the source of such sum in the hands of the resident shareholders. Therefore, since unexplained share premium would be subject to tax under section 68, the amendment in section 56(2) may result in double taxation of the same income. In fact, this will increase the litigation and discourage the Indian private equity investors and other genuine investors in the present growth economy. It is therefore suggested to delete clause (viib) in section 56(2).

Alternatively, section 68 may be amended to exclude the share premium already brought to tax under section 56(2)(viib), to avoid double taxation of the same income. In such a case, the definition of income under section 2(24) should be amended to include any sum of money referred to in section 56(2)(viib).

Further, the Rules to be prescribed for determination of fair market value of shares should be exhaustive and self-contained, so that it enables capturing of business potential in arriving at fair value of share. The basis of determination of fair market value should be spelt out clearly in the rules and should take into consideration the present and future determinants as well.

The provisions of this clause should not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47. Such exemptions have been provided in relation to section 56(2)(viia).

Suggestions

(i) ***Clause (viib) in section 56(2) may be deleted. Alternatively, section 68 may be amended to exclude share premium. In such a case, the definition of income under section 2(24) should be amended to include any sum of money referred to in section 56(2)(viib).***

(ii) ***A proviso similar to the proviso to section 56(2)(viia) should be incorporated in section 56(2)(viib) as well. Further, the proviso should also cover transactions not regarded as transfer under sections 47(vi) and 47(vib).***

(iii) ***The Valuation rules should be similar lines to rules prescribed by the Reserve Bank of India on the basis of Discounted Cash Flow method to permit capturing of future potentials in the valuation.***

(iv) ***Valuation Report from an `Accountant' may be admissible so as to justify higher value of a share and the Share Premium on the basis of value of intangible assets, Land and Building etc. Higher valuation of Land and Building may also be supported by an Approved Valuer under the Wealth Tax Act.***

10. Clause 21 – Amendment of section 56(2)(vii)

Under the existing provisions of section 56(2)(vii), any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed as income and is taxed under the head 'Income from other sources'. However, in case of any individual, receipts from specified relatives are excluded from the purview and hence, are not taxable.

The Explanation to section 56(2)(vii) is proposed to be so as to provide that any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation.

The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 are attracted in respect of income from any sum of money or value of assets transferred to a non-relative. Once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient, the income from such assets should not be subject to the clubbing provisions contained in Chapter V.

Further, it may be noted that, in relation to an "individual", the term relative, as it stands at present, does not include nieces and nephews. This may not be the legislative intent as they also form part of the close circle of relatives and accordingly have been considered as "relative" in the Direct Taxes Code Bill, 2010.

Suggestions

(i) ***The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 should not be attracted once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient.***

(ii) ***Lineal descendents of brothers and sisters of self and spouse may also be included in the definition of "relative".***

11. Clause 22 – Amendment in section 68

As per proposed amendment in section 68, the explanation offered by the assessee company shall be deemed to be not satisfactory unless the person, being a resident, in whose name credit is recorded in the books of such company offers an explanation to the satisfaction of the Assessing Officer about the source of the sum so credited. This would result in assessment of higher tax liability in the hands of borrower for the failure of lender to prove source. In fact, there is adequate provision in law to tax unexplained investment in the hands of lender.

As the assessee company may also have non-resident shareholders, the proposed provisions do not specifically clarify whether explanation will have to be provided by such non-resident also, in order to avoid the applicability of section 68 in the hands of the company.

It would be against the principle of equity if an absolute presumption is made in the case of non-resident shareholders. The presumption should be rebuttable like in the case of resident shareholders.

This seems to be an un-intended interpretational issue on which unnecessary litigation can be averted by giving an appropriate clarification or making a suitable amendment.

Suggestion

Since foreign investments are regulated by Reserve Bank of India through FEMA, it is suggested that the proposed clause be amended to be made applicable only for resident investors like in section 56(viib) .

12. Clause 25 – Amendment of section 80D

Section 80D is proposed to be amended to provide for deduction of up to Rs.5,000 in aggregate for preventive health check-up of the assessee, his family and parents. This is within the overall limit specified under section 80D.

At present, there is a limit of Rs.15,000 in respect of medical insurance premium of self, spouse and dependent children and Rs.15,000 in respect of premium paid for parents. The above limit would be Rs.20,000 instead of Rs.15,000, where any of the persons insured are above the age of 60 years.

With the rising cost of medical treatment, it is necessary to have an adequate insurance coverage for all members of the family. The cost of insurance coverage is also increasing, and with the increase in service tax with effect from 1.4.2012, the medical insurance products would become dearer.

Therefore, the deduction of Rs.5,000 for preventive health check-up should be available in addition to the existing deduction for mediclaim premium.

Suggestion

It is suggested that section 80D be appropriately amended to provide for a deduction of Rs.5,000 for preventive health check-up of any member of the family, which is in addition to the existing limits under that section for medical insurance premium paid.

13. Clauses 27 & 28 – Amendment in sections 80G and 80GGA

Sub-section (5D) is proposed to be inserted in section 80G and sub-section (2A) is proposed to be inserted in section 80GGA to provide that no deduction shall be allowed under these sections in respect of donation of any sum exceeding Rs.10,000 unless such sum is paid by any mode other than cash.

It is not clear from the language of these sub-sections as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or with respect to the aggregate contribution made by a person during a year to an institution or to all institutions covered under section 80G(2) or 80GGA(2).

Further, since deductions under section 80GGB and 80GGC are also in respect of donations, the above limit should be made applicable in respect of such contributions to political parties and electoral trusts as well, to dissuade cash payments.

Suggestions

It may be clarified as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or aggregate contributions to an institution or to all institutions covered under sections 80G(2) and section 80GGA(2), respectively.

Further, since deductions under sections 80GGB and 80GGC are also in respect of donations, the above limit should be made applicable in respect of such contributions to political parties and electoral trusts as well, to dissuade cash payments.

14. Clause 30 - Amendment to Section 80TTA.

Section 80TTA is proposed to be inserted to provide deduction of up to Rs.10,000 in the hands of individuals and HUFs in respect of interest on savings account with banks, post offices and co-operative societies carrying on business of banking.

It may be noted that persons with income under the head "Salaries" and interest of upto Rs.10,000 from savings bank account are being exempted from filing of return of income. However, it is unlikely that salaried individuals would keep their entire savings in a savings bank account, which earns a much lower rate of interest as compared to term deposits. They are likely to transfer some portion of their savings to term deposits to earn comparatively better returns. Therefore, since the money is anyway kept within the banking channels, it is suggested to include time deposit interest within the ambit of section 80TTA. Notification No.9/2012 dated 17.2.2012 conferring exemption from filing return of income to salaried taxpayers with interest upto Rs.10,000 from savings bank account may also be amended to include interest from term deposit within the said limit. This will enhance the utility of exemption given to salaried taxpayers from filing return of income.

Suggestion

Interest on time deposits may also be included within the scope of section 80TTA.

15. Clause 31-Amendments to Section 90 and 90A

The amendments proposed to Sections 90 and 90A, which provide that a term not defined in the Act or agreement can be assigned meaning through a notification, which shall be effective from the date of coming into force of the agreement, in fact amounts to rewriting of the DTAA. This is not an established international norm of treaty interpretation and also is not in line with the principles of Vienna Convention of Law on Treaties.

Further, sub-section(4) is proposed to be inserted to provide for furnishing Tax Residency certificates (TRC) in case the non-resident desires to take benefit of DTAA. Furnishing of TRC for every remittance will increase the time and compliance for frequent business transactions. Section 195(6) already provides for certification and uploading of forms on Department's website. By introducing such requirement, liberalisation in remittance is being taken away which cannot be the intention of the legislature.

Suggestion

It is therefore suggested the aforesaid amendments should be deleted.

16. Clause 34 - Amendment to Section 92B.

The definition of "international transaction" is proposed to be substituted with effect from 1st April, 2002 to amplify the scope of "intangible property" and to include a transaction of business restructuring or reorganization, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has a bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or any future date.

Since this is a change in the provisions of substantive law, the same should be given effect to by an amendment to section 92B explaining the meaning of international transaction and not by way of an Explanation.

Further, in case of intangibles there are generally no comparables, due to which it may be difficult to compute the arm's length price for such transactions.

Transfer Pricing provisions should not be made applicable to marketing intangibles, inter corporate guarantees etc unless a payment is made. Since "bright line concept" which is directly imported from USA is controversial and a subject matter of litigation, marketing intangibles etc. should be kept outside the scope of transfer pricing.

Since the transfer pricing provisions are attracted in respect of international transactions entered into between associated enterprises, consequently the said amendment would require that persons who have entered into such transactions to maintain the books of account prescribed under section 92D and to obtain the report of an accountant and furnish such report under section 92E on or before the specified date being the due date of filing return of income under section 139(1). Non-compliance with such provisions would attract penalty @ 2% of the value of the international transaction under section 271AA and Rs.1 lakh under section 271BA.

The persons who have entered into such transactions may face undue hardship on account of retrospective amendment of the definition of international transaction with effect from 1.4.2002. They would have to face the penal consequences for non-maintenance of books of account and non-furnishing of report of an accountant. Further, comparable data for the earlier years may also not be available, which may cause difficulty in determining arm's length price.

Suggestions

(i) ***It is suggested to substitute the definition of "international transaction" prospectively w.e.f. 1.4.2013 so that persons who have entered into such transactions in the past, which are now affected due to the proposed changes, do not face undue hardship on account of penal consequences which are attracted due to non-maintenance of prescribed books of account and non-furnishing of report of an accountant and any other associated requirement.***

(ii) ***Transfer Pricing provisions should not be made applicable to marketing intangibles, inter corporate guarantees etc unless a payment is made.***

(iii) ***Due to lack of comparables in case of intangibles, appropriate safe harbor provisions may be introduced. Though the enabling provisions for making rules for safe harbour have been conferred on the Central Board of Direct taxes three years back vide Finance (No.2) Act, 2009, the rules in this regard are yet to be notified. It is suggested that the rules may be notified at an early date so that the tax payers are able to avail the benefit intended by the legislature.***

(iv) ***Further, the requirement of obtaining a Valuation Report from an accountant may also be provided for.***

17. Clause 35 - Insertion of Section 92BA

It is proposed to insert section 92BA to define “specified domestic transaction” for applicability of transfer pricing provisions. Transfer pricing provisions, including procedural and penalty provisions, are proposed to be extended in respect of specified domestic transactions, exceeding a monetary threshold of Rs. 5 crores in aggregate entered into by the assessee during the year. The transfer pricing provisions would be made applicable to transactions entered into by domestic related parties or by an undertaking with other undertakings of the same entity for the purposes of section 40A (2), Chapter VI-A and section 10AA.

1) The percentage threshold specified to come within the purview of “related party” is 20% under section 40A and 26%. under current international transfer pricing it Further, in case of tax holiday units, no such threshold is specified, rather a subjective phrase “Close Connection” has been used. A harmonization of definition in this regard shall bring more objectivity.
2) Companies, limited liability partnerships and firms are subject to tax at a flat rate of 30% and therefore, there is no objective of shifting the profits from one entity to another entity in case of a normal domestic transaction. The CBDT, in Circular No.14/2001, had also given this rationale while introducing transfer pricing provisions for international transactions.

   Domestic transfer pricing provisions are prevalent in most countries with certain exceptions like Japan, Australia etc. However, in most of such jurisdictions there is a provision to exempt transaction, where there is no perceptible risk involved of tax erosion say e.g. both are in the same tax bracket, as there is no rationale in covering those assessees under these provisions. However, under the domestic transfer pricing provisions proposed to be introduced, there is no mention of such relief clause as yet. Such exclusionary provision would go a long way in reducing the compliance and administrative burden and saving lot of unnecessary litigation.

Therefore, the transfer pricing provisions for domestic transaction may be made applicable only for the tax payers claiming deduction under section 10AA or Chapter VIA. The expenditure covered in section 40A should not be subject to transfer pricing, since there would be no loss of revenue in such cases because there is no tax erosion.

3) (A) The transaction in which any payment is to be made to the person referred to in section 40A(2)(b) is covered within the meaning of "specified domestic transaction" under section 92BA. Person referred to in section 40A(2)(b) includes in the case of a company, any director of the company. A literal interpretation of proposed domestic transfer pricing provisions would also include application of ALP for determination of managerial remuneration of directors. The moot issue is the manner in which such transactions would be benchmarked in the absence of any comparable data available and comparable standards and methods in place. Also, payment of director's remuneration in compliance with Schedule XIII of the Companies Act, 1956 should be kept outside the scope of "specified domestic transaction". Likewise, remuneration to partners within the limits

specified in section 40(b)(v) should also be kept outside the scope of "specified domestic transaction".

(B) It may be noted that the scope of persons referred to in section 40A(2)(b) is far wider than the scope of persons covered under the definition of "associated enterprise" under section 92A(2). In fact, reference may be made to section 90A(2) rather than section 40A(2)(b).

4) Further, in case the transfer pricing officer identifies a case of excessive cost or under invoicing of sales and resultantly makes adjustment enhancing the tax liability of the concerned assessee, there is no provision to provide corresponding benefit to the other party to the transaction. This will result in double taxation (Countries like UK provide a mechanism of set off to the other party in such circumstances). Also in international taxation, such cases are covered by the treaty which invariably has the provisions to arrest the instances of double taxation.

5) The applicability of transfer pricing provisions to domestic transactions particularly those covered under section 40A(2). will substantially increase compliance burden for tax payers. Therefore, such transactions should be outside the scope of transfer pricing provisions. In any case, if such provisions are to be made applicable to domestic transactions, the threshold limit should be increased to atleast Rs.50 crores in respect of transactions covered under section 40A(2)(b).

6) A co-relative adjustment may also be allowed similar to proviso to section 28(v) i.e. the amount of expenditure allowed in the hands of one enterprise should be treated as

the income of the other enterprise, and vice versa. This principle is accepted in all the developed countries.

7) Further, if the proposal to apply transfer pricing provisions to domestic transactions is to continue, then the proposed provisions for advance pricing agreements should include within its scope such domestic transactions as well.

8) Section 271AA provides for levy of penalty @ 2% of the value of international transaction for failure to keep and maintain any such information and document as required under section 92D(2), failure to report such transaction which he is required to do so or maintains or furnishes incorrect information or document. The levy of penalty @ 2% of the value of international transaction would be very harsh. Therefore, the levy of penalty may be kept at 2% of the profit sought to be evaded from such transactions.

Suggestions

(1) Transfer pricing provisions should not be made applicable in respect of domestic transactions, particularly in respect of transactions in the nature of expenditure under section 40A(2). In any case, payment of director's remuneration in compliance with Schedule XIII of the Companies Act, 1956 and partners remuneration within the limits prescribed under section 40(b)(v) should not be included in the scope of "specified domestic transaction". In case, such provisions are to be made applicable to domestic transactions, the threshold limit may be increased to atleast Rs.50

crores in respect of transactions covered under section 40A(2)(b).

Alternatively, the amount of expenditure allowed as deduction in the hands of one enterprise as per the arm's length price determined should be treated as income of the other enterprise, and vice versa. Also, Advance Pricing Agreements should apply for domestic transactions as well.

(2) The Finance Bill proposes to make transfer pricing provisions applicable to specified domestic transactions. As per the proposal, the existing Transfer pricing provisions would be applicable to domestic transactions covered by sections 40A(2), 80-IA(8)/(10) and 10AA and that domestic concerns would have to comply with the rigours of Rule 10D. This would mean that the provisions of section 92CA(1) w.r.t. reference to the TPO would also apply. The existing administrative machinery of Transfer Pricing (i.e. TPO and DRP) are already over burdened and any further workload without a corresponding increase in the infrastructure will jeopardise the quality of the work.

(3) The penalty for non-disclosure in the certificate by Accountant should be much lower and not 2% of the value of international transaction.

18. Clause 36 – Amendment in section 92C

The Finance Bill proposes to make certain amendments to the second proviso to Section 92C(2). These proposed changes are:

The proviso to Section 92C prior to its amendment by the Finance (No. 2) Act, 2009 does not provide for a standard deduction and recourse to it is only applicable in case the difference between the arm's length price and transfer is within the range of 5%.

The amendment to the proviso to Section 92C made by the Finance (No. 2) Act, 2009 will be applicable for assessment/re- assessment proceedings pending as on 01.10.2009.

Apart from these retrospective amendments, the Finance Bill has also proposed a prospective amendment to the tolerance band. The Finance Bill has proposed that the existing proviso (as per Finance Act, 2011) be amended to provide for an upper cap of 3% to the tolerance band that can be notified by the Central Government as per the enactment in 2011. This amendment has been made w.e.f 01.04.2013.

The present proposed changes may not provide any relief to the taxpayer as these are not in line with the interpretation already adopted by many of the Tribunal rulings. In as much as transfer pricing is not an exact science, this may lead to hardship for the taxpayers. In most countries, like in OECD, a concept of arm's length range is followed. Hence, allowing for a narrow band in a scenario where current year data is used may require a very strict degree of compliance.

It may also be noted that if at all one were to specify an industry specific tolerance band, then it will have to periodically examine to ensure that the percentages/bands specified are as per contemporaneous data for all such industries. If the percentages are not updated contemporaneously, then, it may lead to severe hardship for the taxpayers.

Also, another aspect here is that while the Finance Bill has proposed these amendments, there is no mention about what is the provision for the period April 1 2012 to March 31, 2013. The existing provision is applicable only till April 1 2011 and the new proposed provisions are effective April 1, 2013. In case the provision for April 1 2012 is not clarified then it would imply that there is not tolerance band available to the taxpayers for their transfer pricing arrangements for this tax year. This will be against the spirit and the intent of the arm's length regulations.

Suggestions

It is suggested that as it is possible that there may be more than one arm's length margin possible and to bring the Indian TP provisions more in line with international practices-

(1) The concept of arm's length range like the inter quartile range instead of specifying the tolerance band for each industry may be introduced.
Alternately, the existing provision on 5% tolerance band should be extended till such time the government announces the specific industry percentages as was provided by the Finance Act, 2011

(2) At the minimum, the provision of 5% as it existed before the amendment made by Finance Act, 2011 should be extended for the year April 2011- March 2012 for all taxpayers.

19. Clause 39 - Advance Pricing Agreements (APAs)

New sections 92CC and 92CD are proposed to be introduced to empower the Board to enter into an Advance Pricing Agreement

(APA) with any person undertaking an international transaction to determine the arm's length price (ALP) of an international transaction or specify the manner in which ALP shall be determined. APA to be valid for a period, not exceeding five consecutive previous years, as specified in the agreement. APA to be binding on the person and the Commissioner and his subordinate authorities in respect of the specific transaction. However, APA will not be binding if there is any change in law or facts having a bearing on the APA.

This is a welcome step towards reduction of litigation in the current transfer pricing regime. However, litigation is generally on account of confusion and uncertainty as regards right procedure of selection of comparables and application of filters to bring out the true uncontrolled comparable transaction. An appropriate guidance to the assessees as well as to the TPOs is required, laying the appropriate steps and filtration process under all the recommended methods for transfer pricing by way of case studies which is internationally prevalent. This would go a long way in building transparent transfer pricing regime.

Suggestions

In line with the recommendations of the Parliamentary Standing Committee on the Direct Taxes Code Bill, 2010, it is suggested that an independent agency appointed by the CBDT consisting of technical and judicial Members, should be entrusted with task of framing APAs, specifying the manner in which ALP is to be determined in respect of an international transaction. The independent agency will advise the Board on APAs in order to ensure that the APAs reflect current commercial practices.

(1) An appropriate guidance to the assessees as well as to the TPOs is required, laying the appropriate steps and filtration process under all the recommended methods for transfer pricing by way of case studies which is internationally prevalent.

(2) A mechanism for a review of an APA on account of change in law or facts should be formulated.

(3) Appropriate procedure for withdrawal of application made by a tax-payer for APAs should be provided for in the scheme.

(4) The APAs should also provide for renewal of APAs after the expiry of initial period of applicability, where the business model as well as the law remains the same.

(5) Further, APAs should include a clause to provide that if any DTAA is entered into in future, and the provisions of the DTAA are more beneficial, the same would be applicable to the tax-payer.

(6) For bilateral APA, the APA and MAP negotiation between the two Competent Authorities should commence simultaneously.

20. Clause 46 – Amendment in section 115JB

The Government has notified revised Schedule VI in the Companies Act providing new formats for presentation of Balance Sheet and Profit & Loss A/c. The changes in Revised Schedule VI which may be of relevance to MAT are omission of Part III, moving of 'below the line adjustments' to Balance Sheet and changes in certain disclosure items.

The Finance Bill, 2012 has proposed to omit reference to Part III of Schedule VI since Revised Schedule VI does not contain Part III.

However, other consequential amendments are also necessary consequent to notification of Revised Schedule VI, which have not been addressed in the Finance Bill, 2012.

As per Revised Schedule VI, the profit and loss account prepared as per Part II does not include appropriation to reserves and proposed dividend. These appropriations have to be disclosed by way of Notes to Accounts forming part of the Balance Sheet.

Explanation 1 to section 115JB provides that the book profit means the net profit as shown in the profit and loss account for the relevant previous year, as increased by the amounts referred to in clauses (a) to (i) thereunder, if the same is debited to profit and loss account.

Since as per Revised Schedule VI, the profit and loss account prepared as per Part II does not include appropriation to reserves and proposed dividend, Clause (b) of Explanation 1 providing for adding back of amount carried to any reserves, by whatever name called, and Clause (e) of Explanation 1 providing for adding back of the amount or amounts of dividends paid or proposed may be deleted with effect from 1st April, 2012 i.e. Assessment Year 2012-13, being the date of applicability of Revised Schedule VI.

Unless corresponding amendments are made in MAT provisions, there may be interpretational difficulties on whether for MAT purposes, the P&L needs to be prepared as per Old Schedule VI or Revised Schedule VI. This will lead to unwarranted litigation.

Suggestion

Clauses (b) and (e) of Explanation 1 may be deleted with effect from 1st April, 2012.

21. Clause 47 – Amendment in section 115JC

The provisions governing applicability of AMT has been expanded to include every person other than a company. The provisions would not apply to individual, Hindu Undivided Family ('HUF'), Association of Person ('AOP') or Body of Individuals ('BOI') if the adjusted total income is less than 20 lakhs. All other conditions as applicable earlier remains unchanged including availability of AMT credit for set off in future years (up to 10 years). The said provisions are proposed to be implemented with effect from 01 April 2013.

Based on the current phrasing of the provision, an anomaly arises at the time of claiming the AMT credit as follows:

In year 1, an individual, HUF, AOP or BOI has paid AMT in accordance with the provisions of section 115JC; and is also entitled to claim AMT credit for set-off in future years.

In year 2, if the income of the specified person is less than 20 lakhs, the provisions pertaining to AMT would not be applicable [on account of proposed section 115JEE(2)] and the person would not be entitled to claim the set-off of the carried forward AMT credit.

This does not appear to be intended by legislature.

Suggestions

It is suggested that the provisions should be amended appropriately to clarify that the specified persons are entitled to set-off AMT credit even when their adjusted total income falls below Rs. 20 lakhs in the year of set-off.

Further, even if the tax payer has discontinued the business, he should be allowed to set-off AMT credit, in line with the set-off of business losses allowed even after discontinuance of business.

The benefit of carry forward and set-off of AMT credit should be permitted also in case of conversion of sole proprietorship to firms and LLPs.

22. Clause 54 – Amendment in section 115U

Sub-section (4) of section 115U providing for exemption from dividend distribution tax and tax deduction at source in the hands of the Venture Capital Company and Venture Capital Fund is proposed to be substituted. The intention as spelt out in the Explanatory Memorandum is to tax income on accrual basis in the hands of the investor and provide for deduction of tax at source by the VCC/VCF.

However, the amended language of law may give rise to an interpretation that dividend distribution tax is attracted on such payment, since the specific exemption is now proposed to be removed, in which event there would be no question of deduction of tax at source since the last proviso to section 194 specifically excludes from its scope, dividends referred to in section 115-O. This seems to be an inadvertent drafting error, which may be rectified.

Suggestion

Section 115U may be suitably amended to clarify the correct intention of law as laid down in the Explanatory Memorandum i.e. taxability of income in the hands of the

investor and deduction of tax at source from such income by the VCC/VCF and non-applicability of dividend distribution tax in the hands of the VCC/VCF.

23. Clauses 61 and 62 - Amendment in Section 147 read with section 149

Section 139 is proposed to be amended to provide that every resident having any asset (including financial interest in any entity) located outside India is required to file return of income compulsorily, even if he does not have taxable income. Further, section 147 is proposed to be amended to provide that income shall be deemed to have escaped assessment where a person is found to have any asset located outside India. Also, section 149 is proposed to be amended to provide an extended time limit of 16 years for issue of notice for reopening an assessment, in respect of persons whose income in relation to such assets located outside India has escaped assessment.

An Explanation is proposed to be inserted after section 149(3) to provide that the amended provisions of section 149 shall also be applicable for assessment year A.Y.2012-13 and earlier assessment years.

The Explanation, in effect, conveys that assessments for last 16 years can be subject to reassessment in case of persons who have any asset located outside India. This would cause undue hardship to persons who have any asset outside India, since as per the existing provisions of law, books of account are required to be maintained only for six years. Such persons may not be able to provide the information for the last 16 years.

Therefore, reassessment proceedings in such cases beyond a period of six years prior to the current assessment year should be restricted to only income arising out of such assets located outside India. A provision may be incorporated to clarify the same so that the tax payers are not subject to undue hardship.

Further, in cases of tax payers who are covered under presumptive taxation provisions of section 44AD or erstwhile section 44AF and are exempt from maintenance of books of account, these provisions would cause genuine hardship in case they have any asset outside India, since their income would have been deemed to have escaped assessment and subject to reassessment under section 149.

The provisions in section 147 deeming income to have escaped assessment in the hands of a resident having an asset located outside India may be harsh in the case of genuine tax payers. Giving way forward for the accountability of the revenue, the deeming provisions may be replaced by provisions vesting the onus on the Assessing Officer to provide that the income from such foreign asset has actually escaped assessment.

Suggestions

(i) ***It is suggested that the Explanation proposed to be inserted after section 149(3) be omitted so that effect of this provision is made applicable with effect from a prospective date.***

Alternatively, it may be provided that assessments for A.Y.2007-08 or thereafter may be reopened on the basis of the amended provisions of section 149(3).

(ii) ***Reassessment proceedings initiated for a period prior to six years should be restricted to only income arising out of assets located outside India.***

(iii) ***Further, appropriate amendments may be made to address the genuine hardship which assessees who are subject to presumptive tax provisions may face on account of such provision.***

(iv) ***The term "financial interest" may be defined to ensure clarity.***

(v) ***Giving way forward for the accountability of the revenue, the provisions of section 147 deeming income to have escaped assessment in the hands of a resident having an asset located outside India may be replaced by provisions vesting the onus on the Assessing Officer to provide that the income from such foreign asset has actually escaped assessment.***

24. Clause 71 – Amendment of section 194J

The proposed amendment to section 194J requires deduction of tax at source @ 10% on any remuneration or fees or commission, by whatever name called, to a director of a company, other than those on which tax is deductible under section 192.

However, the independent limit of Rs.30,000 each provided for under section 194J in respect of other payments covered therein, namely, royalty, fee for technical services, fee for professional services and non-compete fees, as a threshold, beyond which TDS @ 10% would be attracted, is not being provided in respect of director's remuneration. This unintended inequity may be removed.

Further, corresponding amendment is required in section 40(a)(ia) to provide for disallowance in case of non-deduction or short-deduction of tax at source.

Suggestion

a. Section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.

b. Section 40(a)(ia) be amended to include within its scope payment to a director on which tax deductible at source has not been deducted .

25. Clause 73 – Introduction of new section 194LAA

This section requires deduction of tax at source @ 1% by the transferee, in case of transfer of immovable property (other than agricultural land) where the sale consideration exceeds the prescribed threshold limit, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by cheque or draft or any other mode, whichever is earlier.

However, in a majority of the cases, loan is taken by the transferee from a bank or financial institution, employer etc. for purchase of immovable property. In such cases, the payment is not made directly by the transferee to the transferor, except for the down payment. The major part of the consideration is paid by the bank, financial institution etc. to the transferor, either in instalments or lump sum. It may be noted that if tax is not deducted by the transferee, on account of the transferee not making direct payment to the transferor, the transferee may face difficulty in registration of the said property on account of non-deduction of tax at source, owing to no fault of either the transferee or the payee.

Therefore, the section should be appropriately modified to require the transferee or the payee, as the case may be, to deduct tax at source from the consideration paid or credited to the transferor. Further, since the main objective of this provision is to have a reporting mechanism in the real estate sector, deduction of tax on the actual sale consideration will serve the said requirement. Therefore, the provisions of adopting stamp valuation may be removed.

FURTHER ISSUES

- Further, the proposed provisions for tax deduction may cause hardship to those sellers who claim full capital gains exemption by investing in the manner provided in sections 54, 54F, 54EC etc.
- Also, the assessees may face practical hardship in applying the proposed TDS provision in case where the consideration is in kind (which is common practice in real-estate sector). For e.g. A land-owner transfers development rights to a developer for agreed built-up area in consideration.

  Dual TDS implications on the same transaction in such cases may lead to practical difficulties as in the said case, both the land-owner as well as the developer would be liable for TDS on the same transaction.

- Hardship is also likely to be faced in cases where the property is purchased jointly, as it is not clear whether the threshold limit (Rs. 50 lakhs or Rs. 20 lakhs, as the case may be) is to be applied to each owner or to the total cost of the property.

- Absence of provisions to address the situation where part payment has been made prior to 1 October 2012 and the balance payments are made after 1 October 2012 may also cause difficulty.
- As per the proposed amendment, registration of property cannot take place unless proof of deduction and payment is furnished. This would mean that the property can be registered only after full payment is made. However, in certain parts of the Country the registration is done after receiving the down payment only which is not the full payment.

Suggestions

(1) The requirement to deduct tax at source may be on the transferee or the payee, as the case may be.

(2) Since the main objective of this provision is to have a reporting mechanism in the real estate sector, deduction of tax on the actual sale consideration will serve the said requirement. Therefore, the provisions of adopting stamp valuation may be removed.

(3) Assessing Officers may be empowered to give exemption from deduction on the assessee furnishing declaration that capital gains exemption would be availed by investing as per the requirements of sections 54, 54F, 54EC etc.

He may be authorised to issue a non-deduction certificate specifically for this purpose.

(4) Appropriate clarifications be issued in respect of property jointly owned, part payments made in respect of property before 1st October, 2012 etc. Given the plethora of issues, the provisions may be re-considered before enactment.

26. Clause 76 – Amendment in section 197A(1C)

Under sections 80D, 80DDB and 197A of the Act, the eligible age limit for senior citizen is proposed to be reduced from 'sixty-five' years to 'sixty' years. As per the Memorandum, the objective of these amendments is to make the effective age of senior citizens uniform across all the provisions of the Act.

However, practical difficulties may be faced by the senior citizens as amendment u/s 80D and 80DDB is proposed to be effective from 01 April 2012 while amendment u/s 197A is proposed to be effective from 01 July 2012.

The proposed amendment u/s 197A with effect from 01 July 2012 will result in undesired anomaly to individuals who are above 60 years but below 65 years as it would result in submitting Form 15G up to quarter ending June 2012 and subsequently, Form 15H for the period on or after 01 July 2012.

Suggestions

This probably results in unintended hardship to these senior citizens and hence, it is suggested that the proposed amendment u/s 197A should also be effective 01 April 2012 in line with the amendments u/s 80D and 80DDB.

Form 15H may also be amended requiring declaration under section 197A(1C) to be made by an individual who is of the age of sixty years or more at any time during the previous year rather than sixty five as mentioned presently in the Form.

27. Clauses 67, 68 & 89 – Provision for rectification and appeal of intimation under section 200A

Under section 200A, an intimation is generated specifying the amount payable or refundable after processing of the TDS statement. However, there was no provision for appeal or rectification of such intimation and such intimation was also not deemed as a notice of demand.

Therefore, the Finance Bill, 2012 has proposed to provide that such intimation would be deemed as a notice of demand under section 156. Further, the intimation generated after processing TDS statement shall be subject to rectification under section 154. Such intimation is also appealable under section 246A. However, these amendments are proposed to be made effective only from 1st July, 2012.

Since these amendments were necessitated on account of the genuine hardship being faced by the assessees, the provisions incorporated to remove such hardship should be given retrospective effect.

Suggestion

The provisions amending sections 154, 156 and 246A to provide for rectification and appeal of intimation under section 200A and deeming such intimation as notice of demand may be given effect to retrospectively.

28. Clause 81 – Amendment of section 209

The provisions of section 209 are proposed to be amended to provide that for computing advance tax liability, only taxes which have been deducted or collected at source and remitted to the Government can be reduced. This implies that tax deductible or collectible at source cannot be reduced if the same has not been actually deducted or collected and remitted to the Government.

This can lead to burden of interest under section 234C on the payee owing to the default of the payer.

Suggestion

Interest under section 234C may be waived off in such cases. In the alternative, the liability to pay interest should arise only in respect of instalments which fall due after such non-deduction or non-collection.

29. Clause 90 - Provisions Related to Dispute Resolution Panel (DRP)

It is proposed that the DRP should be granted the powers to examine issues not referred to it by the taxpayer. The intention behind introduction of the DRP mechanism may be defeated by introducing such provisions, which may, in fact, prolong the litigation, instead of resolving disputes.

Suggestion

The enhancement powers given to the Dispute Resolution Panel (DRP) will create more legal disputes than resolve. The primary task of finding a dispute is that of the AO and the DRP is supposed to resolve the dispute. The proposed powers will lead to creation of disputes at the DRP level.

30. Clause 96 – Insertion of section 271AAB

This section provides for imposition of penalty @10% on undisclosed income found during the course of search and admitted at the stage of search. Undisclosed income not admitted at the stage of search but disclosed in the return of income filed after the search to attract penalty @ 20%. These are covered under clauses (a) and (b) of section 271AAB. In other cases, i.e. cases covered under clause (c), penalty to range between 30% to 90% of undisclosed income.

Sub-section (3) provides that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied under this section.

However, it may not be justified to execute prosecution proceedings where a person has disclosed such income in the course of search or before filing his return of income. Therefore, the prosecution provisions should be made applicable only in respect of cases covered under clause (c).

Suggestion

Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied only under clause (c) of this sub-section, and not in respect of cases covered under clauses (a) and (b).

31. Clause 98 – Insertion of section 271H

Penalty provisions are proposed to be introduced by insertion of new section 271H providing for penalty ranging between Rs.10,000 to Rs.1,00,000 for failure to furnish quarterly statements of TDS and TCS within the time prescribed under the Income-tax Rules, 1962.

However, such penalty would not be levied if the person has paid the taxes deducted or collected along with fee and interest to the credit of the Central Government and has filed the statements within a period of one year from the respective due dates i.e., namely, 15th July, 15th October, 15th January and 15th May, respectively for the quarters ending 30th June, 30th September, 31st December and 31st March.

The TDS/TCS statements form the basis of preparation of annual tax statement in Form 26AS. The deductee is required to confirm the exact tax deducted/collected at source and remitted to the Government by verifying Form 26AS online, and thereafter pay the remaining taxes by way of self-assessment tax. However, if TDS/ TCS statements are permitted to be filed within one year of the due date prescribed for each quarter on account of non-levy of penalty, then the same would extend beyond the due date of filing return of income of that assessment year in respect of the second, third and fourth quarters. It may cause genuine hardship to the deductees as they would not be able to verify the TDS/TCS credited to their account, for payment of self-assessment tax before the due date of filing of return of income.

Therefore, it is felt that penalty provisions should be attracted if such statements are not filed at the latest before due date of filing return of income.

Further, Section 271H provides for the minimum and maximum penalty, within which range, penalty can be imposed. The discretionary powers provided to the Assessing Officer in levying a penalty ranging from Rs.10,000 to Rs.100000 may lead to hardship to the assessee.

Discretion element in levying penalty should be removed. Penalty may be prescribed having regard to quantum of default and the period of delay. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed

Suggestion

i. Sub-section (3) may be amended to provide that penalty provisions under section 271H would not be attracted if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he has delivered or caused to be delivered the statement referred to in section 200(3) or the proviso to section 206C(3) before the expiry of due date of filing of return of income of the previous year in which the tax was so deducted or

collected, irrespective of the quarter to which the tax relates.

ii. ***Penalty may be prescribed having regard to quantum of default and the period of delay, and no discretion may be given to the Assessing Officer in this regard. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.***

32. Provision to be incorporated in the Finance Bill, 2012 to incorporate deduction in respect of investments made in Rajiv Gandhi Equity Savings scheme

As per para 35 of page 7 of the Speech of the Finance Minister, a new scheme called Rajiv Gandhi Equity Savings Scheme is proposed to be introduced. New retail investors, who invest Rs.50,000 directly in equities and whose annual income is below Rs.10 lakhs, would be entitled for deduction of 50% of their investment.

However, no clause has been incorporated in the Finance Bill, 2012 to give effect to this proposal.

Suggestions

A clause may be incorporated in the Finance Bill, 2012 to give effect to the above proposal.

Further, while giving effect to the above proposal, the benefit of deduction may be extended to existing retail investors also, in order to achieve the intended objective of encouraging continued flow of savings in financial markets.

33. General Anti Avoidance Rule (GAAR)

The Finance Bill, 2012 proposes to provide General Anti Avoidance Rules in the Income Tax Act to deal with aggressive planning. Accordingly an Arrangement whose main purpose or one of the main purposes is to obtain a tax benefit and which also satisfies at least one of the four tests can be declared as an "Impermissible avoidance arrangements". The four tests referred to are–

(a) The arrangement creates rights and obligations, which are not normally created between parties dealing at arm's length.

(b) It results in misuse or abuse of provisions of tax laws.

(c) It lacks commercial substance or is deemed to lack commercial substance.

(d) Is carried out in a manner, which is normally not employed for bonafide purpose.

Under the GAAR Provisions it shall be presumed that obtaining of tax benefit is the main purpose of an arrangement unless otherwise proved by the taxpayer. Approving panel (comprise of officers of rank of Commissioner and above) shall be set up by the Board to dispose of, the reference within a period of six months from the end of the month in which the reference was received from the Commissioner.

Suggestions

1. All the other recommendations given by the Parliamentary Standing Committee in respect of GAAR provisions under the Direct Taxes Code Bill, 2010 may

also be considered with regard to the relevant provisions of GAAR in the Income-tax Act, 1961.

2. *Applicability of GAAR provisions may be restricted only to instances of tax avoidance, as against legitimate tax planning, i.e., where the tax benefit is not within the intended scope of the Indian Income Tax Act, 1961; rather than covering all cases involving a tax benefit.*
3. *The constitution of the Approval Panel may include members from judiciary bodies, independent of the Income Tax Department. Objective guidelines, in the form of Notifications or Circulars may also be provided to illustrate cases where the Revenue Authorities will, and importantly, will not invoke GAAR.*
4. *The initial burden of proof must be placed on the Revenue Authorities, to prima facie make out a case for invoking GAAR.*
5. *Appropriate thresholds must be prescribed in order to prevent GAAR provisions being applied to cases which do not cross such thresholds. The thresholds may be defined with reference to any or more of the following:*
   a. *Taxable income of the taxpayer involved*
   b. *Quantum of income or expense involved in the transaction,*
   c. *Quantum of tax benefit or tax rate differential involved*
6. *It is suggested that the existing provisions of sections 245N to 245V relating to Advance Ruling be extended to any arrangement or transaction to be entered into by Residents with Residents also. It may also be provided that if AAR approves any arrangement or*

transaction the provisions relating to GAAR (Sections 95 to 102) will not apply.

7. ***Transactions which have passed the specific anti-avoidance tests should not be subject to the rigors of GAAR. A specific exemption may be provided in this regard.***

II. OTHER SUGGESTIONS

1. Section 43A - Exchange fluctuation loss due to sharp fall in Rupee value

Section 43A was inserted in the Income-tax Act, 1961 by Finance Act of 1967, which permitted Capitalization of Foreign Exchange Fluctuation Loss in the borrowing used for acquisition of assets outside India.

The exchange fluctuation loss on borrowings used for domestically acquired assets is not permitted to be capitalized for tax purposes.

The current financial year saw Rupee depreciate significantly against the US $ severely impacting the industry – particularly those who have exposure to ECBs and FCCBs.

The Ministry of Corporate Affairs swiftly moved in to amend AS-11 notified under section 211(3C) of the Companies Act,1956 to enable the corporates to defer the hit to the Profit & Loss, inter alia, by capitalizing the exchange fluctuation loss to the cost of the fixed assets.

Suggestion

It is suggested that Section 43A be amended to allow Capitalization of such foreign exchange loss even for domestically acquired asset.

2. Investment in Section 80CCF

Considering the fact the Finance bill, 2012 is silent regarding the deduction in respect of subscription to long term infrastructure bonds u/s 80CCF, it is suggested that deduction may be extended for further assessment years and the qualifying amount may also be increased to 50,000/- instead of present limit of Rs. 20,000/- p.a.

Suggestion

Deduction under section 80CCF may be extended for the financial year 2012-13 and subsequent years and the limit may be suitably enhanced.

III. REPRODUCTION OF SUGGESTIONS OF ICAI GIVEN IN PART II OF THE PRE-BUDGET MEMORANDUM-2012 TO REDUCE/ MINIMIZE LITIGATIONS

1. "Annual receipts" under section 10(23C)

Under section 10(23C)(iiiad) and (iiiae) of Income-tax Act, it is provided that the income of University/Educational institutions/ hospitals/other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Though annual receipts have been prescribed as Rs.1 crore vide Rule 2BC of Income-tax Rules, the word "annual receipts" have not been defined in the Income-tax Act.

It is not clear as to whether:

(a) for computing "annual receipts" only the receipts of such institutions from educational/hospital activities alone are to be considered each year;

(b) Certain receipts of such institutions that are not received on annual basis e.g. receipts from sale of property, equity shares and other proceeds on divestment are to be excluded from the computation of "annual receipts";

(c) In certain cases where such charitable institutions receive donations in in kind in the form of land, movable assets etc. whether "annual receipts" would exclude such receipts since they are not received annually.

Suggestion

It is suggested that "Annual Receipts" be clearly defined as income of the hospitals/educational institutions arising regularly/every year but excluding value of donation received in kind by way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.

Further, it may be specifically provided that donations received towards corpus by way of land, movable assets are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.

2. Exemption under section 54 & 54F

a) Under Section 54 of the Income-tax Act, if an assessee who has earned a Capital Gain on sale of a residential house, has, within the prescribed period, purchased or constructed another residential house, then, to the extent of the cost of the new residential house, no tax in respect of such Capital Gain is payable. There is a similar provision under Section 54F under which the Capital Gains arising on transfer of ANY long term capital asset will also be exempt from tax, if the assessee has, within the prescribed period, purchased or constructed a residential house, to the extent of the cost of such new residential house.

A considerable volume of litigation has arisen in the past on the issue as to 'when' exactly an assessee can be considered to have purchased or constructed a new residential house and also on the issue as to whether the acquisition of the new residential flat in an Ownership Apartments Scheme (OAS) or a Co-operative Housing Society is "purchase" or "construction". This distinction is important because, the prescribed time limits for both are different.

The above controversy has been set at rest by the CBDT in relation to the acquisition of a flat by an allottee under the self-financing scheme (SFS) of the Delhi Development Authority (DDA) by issuing the Circular No. 471 of 15.10.1986. The Circular has clarified that in case of allotment of a flat by the DDA under the SFS, the allotment by DDA will be treated as "construction" of a residential house and that the "construction" shall be deemed to have been made on the date of allotment of the flat on payment of the first installment of the price of the flat even though, full price of the flat has not been paid.

It is submitted that acquisition of a residential flat in an Ownership Apartments' Scheme (OAS), the plans of which have been approved by all the authorities whose approval is necessary under the law, should be treated on par with acquisition of a flat under the SFS of the DDA. On a parity of reasoning, the exemption under Sections 54 and 54F should be available to an assessee who has entered into an agreement for purchase of a residential flat with a Real Estate Developer (RED) and he will be deemed to have 'constructed' the new residential house on the date on which the Agreement for Purchase has been registered with the Registering Authority after payment of the amount payable on signing the Agreement. To avoid misuse of the exemption, a further condition may be imposed that if the person has not paid to the RED more than 50% of the purchase price of the residential flat within the period prescribed under Sections 54 and 54F for "construction" of a new residential house, and/or, has not got actual possession of the residential flat on payment of full purchase price of the flat within a further period of three years after the expiry of the prescribed period, the exemption shall be withdrawn. The exemption will be to the extent of the total cost of the residential flat as per the Agreement for Purchase. The presumption is that the RED constructs the Ownership Apartment on behalf of the flat owners.

The preponderant view taken by many Tribunals and Courts in several decided cases supports the submission made in the precedent para. See *"Shashi Verma V. CIT 224 ITR 106(MP), CIT V. R.L. Sood 245 ITR 727 (DEL), Hilla Wadia CIT 216 ITR 376 (BOM).* However, some Tribunals and Courts have taken a different view. As there have been conflicting Judgements on the issue, many Assessing Officers (AO) take the view that the exemption is available only if the actual possession of the new residential house has been taken after payment of the entire cost of the residential house within the prescribed period. Some have also taken a view that when an assessee joins an "OAS" he is "purchasing" a flat and not constructing a flat. Such a view causes considerable unjustified hardship to the assessees and has resulted in a lot of avoidable litigation.

The aforesaid view taken by some Assessing Officers strikes at the very root of the intention of the Parliament in enacting the Sections 54 and 54F for giving the much needed relief to assessees who need to change a residential house for various genuine and valid reasons, and they have no option but to join on "OAS". It is evident that they do not earn a real capital gain on sale of the first residential house when they have to necessarily utilize that capital gain for acquiring the new residential flat. The real estate prices have been continuously on the increase. Therefore, the new residential flat will usually cost more than the sale price of the one sold. When a person books a flat in a large OAS, he cannot be sure that the scheme will be completed within the period prescribed in Sections 54 and 54F. In most case, large OAS take a longer period for completion than the one prescribed for ‘construction’ in Sections 54 and 54F.

It has been an ‘oft declared’ policy of the Government to take all steps necessary to reduce litigation because of the very large number of pending cases with the Supreme Court and the High Courts. On this issue, there has been considerable avoidable litigation because of differing interpretations taken by AOs, Tribunals and Courts on the question whether acquisition of a residential flat in an OAS is ‘purchase’ or ‘construction’ and when the ‘purchase’ or ‘construction’ can said to have taken place.

Suggestion

In order to avoid avoidable litigation, a Circular on the said subject be issued clarifying that in a case where an assessee has entered into a Registered Agreement for Purchase of a residential flat in an “OAS” and the assessee has paid more than 50% of the cost of the residential flat within the period prescribed in Sections 54 and 54F and has, within a further period of three years obtained actual possession of the residential flat on payment of its full price, the assessee shall be deemed to have “constructed” a ‘residential house’ within the meaning of Sections 54 and 54F on the date on which the Agreement for Purchase has been registered and the exemption under the said Sections will be available to the assessee to the extent of the aggregate cost of the residential flat agreed to be purchased.

(b) The proviso to section 54F(1) provides that the nothing contained in this sub-section shall apply where (a) the assessee (ii) purchases any residential house, other than the new asset within a period of **one year** after the date of transfer of the original asset.

Further, section 54F(2) provides that where an assessee purchases, within the period of **two years** after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (*a*), or, as the case may be, clause (*b*), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

It may be noted that the proviso to sub-section (1) discourages the assessee to purchase a new house within a period of one year and sub-section (2) discourages the assessee to purchase a new house within a period of two years. There seems to be inconsistency between the two provisions of the same section.

Suggestion

It is suggested that the inconsistency in the sub-section (2) and proviso to the sub-section (1) and may be removed to avoid unnecessary litigations.

3. Section 50C

Section 50C being a special provision for considering full value of consideration in certain cases was inserted by Finance Act, 2002 w.e.f. assessment year 2003-2004. Accordingly, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or buildings or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Section 50C which provides for adopting value for stamp duty in the place of actual consideration is similar to section 52(2) withdrawn earlier due to Supreme Court decision in *KP Varghese case, 131 ITR 597*. Our reservations in regard to this provision are for the following reasons:-

(a) Guideline value is not fixed in a scientific manner by the State Government authorities.

(b) Guideline value is fixed for a particular survey number or division number encompassing several properties whose market value can never be the same.

(c) The concept of real income gets affected and capital gains will be computed on basis of notional figure.

(d) Guideline value is periodically increased in some States even though there is no corresponding increase in the market value.

(e) Even under Chapter XXC, guideline value never influenced the decision to purchase any property as the Appropriate Authority always appreciated that market value is different from guideline value. Guideline value is one of the indicative factors but not conclusive as to the fair market value of a property.

(f) Any understatement of consideration should be tackled by investigation mechanism and not by such an amendment.

(h) Reference to Valuation Officer and the value so estimated can be subject matter of prolonged litigation without ultimate increase in revenue.

(i) Computation of capital gain on the basis of unrealized notional value will lead to difficulty in availing exemption by making eligible reinvestment.

(j) Even in cases where transactions are approved by public charity commissioner, Reserve Bank of India, Appropriate Authority (up to1.7.2002) invoking guideline value will lead to anomalous situations.

(k) This provision is prone for subjective assessment and prolonged litigation on complex issues/disputes.

Suggestions

It is suggested that the provisions of section 50C should be reviewed with reference to the following:

- ***In case where 50% or more has been paid as registration money, the date of agreement may be considered for the purpose of valuation and not the date of actual registration of the property.***

- ***If the transactions for sale of property are entered below the circle rate, the provisions of Tax Collection at Source (TCS) may be introduced and tax be collected at a reasonable rate (say @ 1%). However, after checking the genuineness of the transaction, due refund should allowed as per procedures.***

- ***In order to avoid litigation, it may be clarified that in respect of the assets which are invested into the common pool of the partnership whether section 56 or section 50C, would be applicable.***

- ***Section 50C(2) provides that subject to fulfillment of certain conditions, the Assessing officer may refer the valuation of capital asset to the Valuation officer. It is suggested that the word "may" be substituted with "shall".***

4. Section 94A-Special measures in respect of transactions with persons located in notified jurisdictional area

One of the tax consequences of a country or area being notified as NJA is that payments to persons located in that NJA would be subject to a higher withholding @ 30%. The relevant provision which provides for this implication i.e., section 94(5), would be applicable notwithstanding anything to the contrary contained in the Act.

Section 206AA which provides for higher withholding @ 20% in absence of PAN of payee is also applicable not withstanding anything to the contrary contained in the Act.

Though the intent appears to be that section 94A would override section 206AA, there may be some difficulties in interpretation.

Suggestion

Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.

5. Section 32 - Depreciation in case of slump sale

The proviso to section 32 provides that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the de-merged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

Suggestion

An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act. Section 32 may be amended to clarify the legal position.

6. Section 35AD - Deduction in respect of expenditure on specified business

The Finance Act, 2011 has extended the benefit of investment-linked tax deduction to two new specified businesses i.e., the business of (a) developing and building affordable housing project as per notified scheme and (b) production of fertilizers in India.

With regard to production of fertilizers, the benefit would be available if the specified business commences its operations in a 'new plant' or 'newly installed capacity in an existing plant'.

Suggestions

(i) 'New Plant' and 'newly installed capacity in an existing plant' may be defined objectively to ensure clarity and avoid litigation.

(ii) The threshold for expansion of existing plant may be provided on the lines of 'substantial expansion' as defined for the purposes of sections 80-IC and 80-IE.

7. **Section 115JB - Minimum Alternate tax (Partially accepted in the Finance Bill, 2012)**

(a) Disallowance of provision for diminution in value of any asset for computation of "book profit", it appears, is to be made in every class of company. However, in case of banking companies the Government may give a relook and consider applicability of the disallowance provision to a banking company. This is because that in computation of business income under normal provision, deduction in respect of provision for bad debts is allowed under express provision contained in section 36(1)(viia) subject to the limit specified in the said section. If provision for bad debts is allowed as deduction in computation of business income under normal provision, there does not appear to be any cogent reason for disallowing the same in computation of "book profit" under section 115JB.

(b) It is claimed by certain assessees that the provision of section 115JB is not applicable to banks, as banks are not required to prepare Profit & Loss Account as per Parts I and II of Schedule VI to the Companies Act, 1956 and they prepare Profit & Loss Account as per Banking Regulation Act.

(c) Section 115JB(2) requires every company to prepare its profit and loss account in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956. Consequent to revision of Schedule VI, it is necessary to amend section 115JB(2).

Suggestion

(i) ***Clause (i) of Explanation 1 to section 115JB may be amended as follows-***

"(c) the amount or amounts set aside as provision for diminution in the value of any asset (other than provision for bad and doubtful debts allowed as a deduction u/s 36(1)(viia))"

(ii) ***Necessary amendment may be made in sections 115JB. It may be provided that where format of financial statements presented before the general body/AGM is prescribed under any other law (such as Banking Regulation Act, Electricity Act etc.) or by any regulator such as IRDA then book profit as per profit and loss account drawn up in accordance with such Act or regulation shall constitute the book profit for the purpose of section 115JB and not profit and loss account drawn up as per Schedule VI.***

(iii) ***Considering the above, section 115JB(2) may be amended to provide that every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of relevant statue.***

8. Section 206AA – Requirement of furnishing of PAN for deduction of tax at source.

Section 206AA reads as "*Notwithstanding anything contained in any other provisions of this act, any person entitled to receive any sum or income or amount on which tax is tax is deductible under chapter XVIIB, (hereinafter referred as deductee) shall furnish his PAN to the Deductor failing which tax shall be deducted at higher of three rates specified in section 206AA.*

This section however, does not takes into account the situation where payee is not required to take PAN as per the provisions of Section 139A or such payment is not taxable in India (in case of Non Residents).

Due to applicability of this section residents, who are not required to obtain PAN as per section 139A, will also have to take PAN. As this section has a non- obstanate clause, payer has no option but to deduct TDS at a higher rate to comply with the provisions of the said section, though may not be the intention of the legislature.

As no exception has been made as regards the payments to a non-Resident, it is assumed that section 206AA is applicable to the payment made to a non-resident also. However, as per the provisions of Rules 114C(1)(b) of the Income-tax Rules, 1962, specifying the class or classes of persons to whom the provisions of section 139A (PAN) shall not apply, non-resident is not required to get PAN allotted in his name.

Further, it may be noted that Section 195(5) of Direct Taxes Code Bill, 2010 reads as follows:-

"Notwithstanding anything in this Code, the appropriate rate referred to in subsection (1) shall, in a case where the deductee has failed to furnish his permanent account number to the deductor (except where the deductee is not required to obtain permanent account number under section 292), be the higher of following rates, namely:—

(a) twenty per cent.; and

(b) the rate specified in sub-sections (2), (3) or sub-section (4), as the case may be."

In line with the provisions of proposed section 195(5) supra those assessees who are not required to obtain PAN should be exempted from the provisions of section 206AA of the Income-tax Act, 1961.

Suggestion

A proviso should be inserted in section 206AA to the effect that the provisions of this section shall not be applicable in respect of the assessee who is not required to obtain Permanent Account Number under section 139A.

9. Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

(i) In the above-mentioned case the assessee filed its return of income for the relevant assessment year without claiming a particular deduction. Later on, it sought to claim the deduction by way of a letter addressed to the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make amendment in the return of income by making an application at the assessment stage without revising the return.

The assessee had relied upon the decision of the Apex Court in National *Thermal Power Company Ltd. v. CIT (1998) 229 ITR 383*, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal. In that case, it was held that the Tribunal had jurisdiction to examine a question of law (raised for the first time), which arose from the facts as found by the income-tax authorities and which have a bearing on the tax liability of the assessee.

The Supreme Court held that this decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. Therefore, the assessee can claim deduction only by filing a revised return.

The above-mentioned decision of the Apex Court has unsettled many a case law and has caused unintended hardship to the assessees.

Suggestion

Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings by methods otherwise than by way of filing a revised return.

(ii) No deduction is permitted to an assessee under section 10AA and Part C of Chapter VIA if the assessee fails to make a claim in the return of income. This provision is very harsh and disentitles the assessee to legitimately claim otherwise legally allowable due to technical reasons. In many cases, failure to make claim in return may be inadvertent and mere omission. There are wide powers given to the Income tax Authorities under the Income-tax Act to reopen / review / rectify assessment if any error prejudicial to the interest of the Revenue is found.

Also in the case of *Goetze (India) Limited Vs CIT (284 ITR 323)* the Apex Court has held that it is necessary for an assessee to revise its return of income for raising any new claim which is not raised in the original return of income.

Suggestion

Provisions of section 80A(5) should be modified to permit filing of new claim by the assessee in the course of assessment, even without filing of revised return of income. This will remove unintended hardship.

10. Introduction of Advance Ruling for residents

In order to provide the facility of determining the tax liability of non- residents in advance and with a view to avoid disputes in respect of assessment of income tax liability in the case of non-residents, a scheme of advance ruling was introduced by finance act, 1993.The scheme enables the non-resident to obtain, in advance, a binding ruling from the authority for advance ruling on issues which could arise in determining their tax liabilities. Time consuming and expensive litigation can, then be avoided. Such issues may relate to transactions undertaken or proposed to be undertaken by the non-resident applicant. The Scheme has been very successful in avoiding tax-litigation in case of non- residents.

Suggestion

It is suggested that the same scheme should be introduced for resident's tax purposes also. In case of residents also, it has been observed that assessee takes one interpretation of law and executes the transactions which is denied by the department causing hardship of paying taxes which he thought is not actually payable.

Further, in order to avoid unnecessary application, the scheme can be so framed that only transactions involving certain threshold of investment can be applied or fee for advance ruling can be fixed in a way that small and unnecessary applications are avoided.

11. Clarification regarding TDS on Commission to a partner under section 194H read with section 40(b)

In case of partnership firms Section 40(b)(i), provides that "remuneration" shall mean any payment of salary, bonus, commission or remuneration by whatever name called. Considering a partner and partnership firm as one entity, the provisions of tax deduction at source under section 192 have not been made applicable on payment of such remuneration, as the same is not taxable under the head "Salaries".

Further, section 194H provides for tax deduction at source in respect of commission or brokerage. The issue which arises here is whether, the Commission referred to in section 194H would cover commission paid by the Partnership firm to its partners and be liable to Tax deducted at source.

Suggestion

A clarification should be provided to the effect that Commission under section 194H would not include commission paid by the partnership firm to its partners

12. Signing of notices under Section 282A

The new section 282A has been inserted to provide for issue of any income tax notice or other document without it being signed by the requisite authority. This can result in widespread misuse of powers and harassment. The memorandum has explained that this change is being provided for in the context of computerized generation of notices and other documents.

Suggestion

It is suggested that the computerized notice / document should have a separate control like provision for a digital signature because these are legal / statutory documents and this aspect should specifically be incorporated in section 282A. In respect of manual notices/documents the section should also record that signatures will be mandatory applicable.

13. Applicability of Education Cess and Secondary and Higher Education Cess - Double Taxation Avoidance Agreement

Under the Income-tax Act, 1961, Education cess and Secondary and Higher education cess are imposed on account of the provisions contained in sub-section (12) of Chapter III of the

Annual Finance Act which provides the rates of income-tax. The education cess is to be calculated on the amount of income-tax as specified in sub-sections (1) to (10) of the said Chapter. However, none of these sub-sections deal with the rate specified in DTAA, which becomes leviable by virtue of the provisions of section 90A(2). Therefore, the moot issue is whether the Education cess and Secondary and Higher education cess would be applicable where the rates specified in the respective DTAA becomes applicable by virtue of the beneficial provisions contained in section 90A(2).

It may be noted that at the time when a Double taxation avoidance agreement is entered, the intention is to arrive at an all inclusive fixed rate of tax.

Suggestion

Appropriate amendment may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.

14. Section 147/Section 148

(i) Nowadays, reopening notices under section 147/section 148 have become a very common occurrence and such notices are being served in thousands across the country. It appears that there is no consideration in following the principles on the subject laid down by the Hon'ble Supreme Court and High Courts over the years. Simple audit observations, even on points of law, are frequently being used as grounds for re-opening leading to extreme harassment to all assessees. In fact, the position has become so bad that even for legislations which have become obsolete like Interest Tax (withdrawn in Finance Act, 2001) reopening being done for very old years since the relevant law permitted reopening without any time limit.

Suggestion

Therefore, it is suggested that proper stipulations be laid down for any reopening and the period of reopening be also reduced to 3 years from the end of the assessment year.

(ii) Proviso to section 147 has been inserted to provide that the Assessing Officer may assess or reassess other than matters which are the subject matter of any appeal, reference or revision. However, in respect of matters which have already been examined at the time of original assessment, the current law as laid down by the various courts categorically stipulates that reassessment of the same cannot be done since it will result in change of opinion. Moreover, it does not make sense to keep on assessing/reassessing the same matter again and again. The annual income tax assessment/reassessment procedure should be normal and routine and should not provide for excessive powers to harass assesses.

Suggestion

It is suggested that the new proviso to section 147 should also state that all matters which have been examined in the original assessment should not be reassessed.

15. Section 195 read with section 194LB

Section 194LB was introduced by the Finance Act, 2011 which provided in respect of interest payable to a non-resident, not being a company or to a foreign company, by an infrastructure debt fund, tax shall be deducted at the rate of 5% at source.

Further, section 195 provides that in respect of interest or any other sum payable to a non-resident, not being a company or to a foreign company, income-tax at the rates in force shall be deducted at source.

Section 195 does not provide that it shall not apply to the interest mentioned in section 194LB.

Suggestion

Section 195(1) should be amended to read as follows:

"Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest [OTHER THAN INTEREST MENTIONED IN SECTION 194LB] or any other sum chargeable under the provisions of this Act……………………"

16. Delay by Assessing Officer in giving Order giving effects to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order giving effects:

It has been experienced that when any order of higher appellate authorities is received, and moreover when the order is in favour of the assessee, the Assessing officer delays in issuing the Order giving effects to such appellate orders. Due to this delay, the refund arising from such appellate orders also gets delayed.

Secondly, it is also observed that in most of the cases the issuing of Refund Cheques/Warrants are purposefully delayed and the interest on such refunds, as per the provisions of the Income-tax Act, is calculated only up to the date of issue of Assessment order / Order Giving effects to appellate orders. This results in, assessee being deprived of interest on the delayed refunds and also assessee does not earn any interest on the Interest on Refunds for the period of such delay of issuing of refund warrants by the Assessing officers.

Suggestion

It is suggested that time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act and also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act)

17. Initiation of penalty proceeding in every assessment orders

Assessing officers initiate penalty proceedings in each and every assessment order in view of Honble Supreme Court judgement in case of *Dharmender Textile 306 ITR 277 [2008]*, irrespective of the fact whether or not there is any actual concealment of Income or furnishing of inaccurate particulars of income by the assessee. It has been noticed that even in cases where there is difference in interpretation of provisions or wherever there are two views arising, the penalty proceedings are initiated. This is causing undue hardship to the assessees who have to file separate appeal for dropping of such penalty proceedings leading to prolonged litigation.

Suggestions

(1) ***Suitable remedial measures should be incorporated in the Act providing relief to the genuine hardship faced by the assessees on account of imposition of penalty even where there is no concealment of income.***

(2) ***Further, in respect for pending cases, to reduce litigations, it is suggested that a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also be introduced. It is suggested that in cases where addition made is NOT more than 50% of income or Rs.10,00,000 whichever is less:***

a) ***Penalty under section 271(1)(c) may be dropped.***

b) ***50% of the interest levied may be waived off.***

c) ***No further appeals should be allowed to be filed either by the Department or by the assessee similar to existing provisions of Central Excise.***

18. Section 132 - Search and seizure

(a) In the case of search under section 132, when cash is seized, it is kept in P.D. account of CIT. This cash is not adjusted against the advance tax inspite of specific request made by the assessee for such adjustment. Even in cases when assessee makes declaration of undisclosed income, the amount of cash seized is not adjusted against the tax liability relating to undisclosed income to be paid by the assessee.

The provision of clause (i) of section 132B (1) regarding application of seized assets is not very clear in this regard. It requires seized assets to be applied first towards the amount of the existing tax liability, if any, and thereafter towards the amount of the tax liability to be determined on completion of the assessment relating to search years including any penalty levied or interest payable in connection with such assessment. The provision is not clear as to what would happen to cash seized till completion of assessment or penalty proceedings.

The provision of sub section (4) of section 132B regarding payment of interest is also not clear as to whether interest is payable on surplus money after adjusting the liability arising on assessment under section 153A or on the total amount of cash seized from the date of seizure till adjustment of the same towards tax liability arising on assessment.

Suggestion:

In view of the above, amendment is required under section 132B clarifying the amount of cash seized to be permitted for adjusting against the advance tax liability of the assessee where specific request is made for such adjustment. This would help in early realization of tax, avoid litigation and save the assessee from mandatory interest charged under sections 234B and 234C.

(b) Further after search, as per amended provision by the Finance Act 2010, where assessee files application with Settlement Commission for settlement of his cases, the cash seized during search be permitted to be adjusted against the tax due as per the offer made by the assessee in the settlement application. It may be mentioned that as per the provision contained in this regard, the assessee has to make additional disclosure of income in the settlement petition and pay the taxes (which is proposed to be minimum Rs. 50 lakhs per case) before filing the application with the Settlement Commission.

Suggestion

Since cash is seized at the time of search and lying in PD account of CIT, such cash after adjusting existing tax liabilities, may be permitted to be adjusted against the tax due as per settlement petition. Suitable amendment/ instruction is required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.

(c) Section 132B provides for application for seized or requisitioned asset. The first proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which it was seized for the release of asset and the AO is satisfied about the explanation provided regarding the source of asset, the asset is released after recovery of the amount of any existing liability.

Further, second proviso to section 132B(1)(i) provides that such asset or a portion thereof shall be released within a period of 120 days from the date on which last of the authorizations for search under section 132 or for requisition under section 132A as the case may be, was executed.

Even after release of Instruction No.11/2006, dated 1-12-2006 practical difficulty is being faced by assessees as the asset is not released upto the completion of assessment.

Suggestion

In view of the practical difficulty being faced, it is suggested that a provision like 132(5) [omitted by Finance Act, 2002] which provided for provisional assessment be introduced and the asset be released after releasing the amount due as per provisional assessment.

19. Desirability to bring back block assessment system

Since block assessment has been discontinued there is litigation in regard to the year of taxability of certain income/assets discovered in search. If it is provided that an assessee can agree to subject the whole of sums/assets to the taxed in the year of search at a flat rate of 60% (tax which is equal levy of 100% penalty on today's maximum marginal rate). No further proceedings/assessments would become necessary. Taxing into consideration the ground reality such voluntary compliance at every stage should be encouraged. By closing the option of voluntary compliance in search cases at higher cost, the defaulting tax payers will be compelled to opt for litigation for the income, which he had otherwise readily agreed to offer for taxation. In this process he may or may not succeed but can definitely prolong the litigation.

Suggestions

The continuance of earlier block assessment procedure is desirable. The above approach would assist in

(a) ***reducing controversy over the year of taxability of income;***

(b) ***providing suitable incentive for a person to make the necessary disclosure without indulging in litigation and***

(c) ***removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.***

20. Section 80IA – Unit-wise deduction should be allowed

Plain reading of section 80IA gives the impression that deduction under section 80IA is available 'unit wise'. But, nowadays, losses of other units are clubbed to deny deduction under section 80IA of the Income-tax Act, 1961 on the reasoning that all units constitute one single business. Since total income from eligible business is loss, deduction under section 80IA is disallowed (Even when loss of other unit has been set off against profit of non eligible business income). This practice is discretionary in nature. An assessee/ company who is claiming deduction under section 80IA from one unit cannot start another unit of similar business as the initial losses of new unit will get adjusted with the profits of old unit However, if the new unit is started by another assessee/company ,old unit will not suffer any disallowance under section 80IA. This put existing assessee/company into disadvantageous position vis-à-vis new assessee/company. Many Tribunal benches (Bangalore, Mumbai etc.) have already rejected this practice.

Suggestion

A specific clarification/provision should be made in section 80 IA itself to provide that deduction under section 80IA is 'UNIT SPECIFIC'. For each unit deduction under section 80IA should be separately calculated.

21. Section 245A - Settlement Commission

(a) Section 245A defines "case" to mean any proceeding for assessment under the Act, of any person in respect of any assessment year(s) which may be pending before an Assessing Officer on the date on which application for settlement of case is made. It further provides that a proceeding for assessment or reassessment or re-computation under section 147, shall not be a proceeding for assessment.

Before the enactment of Finance Act, 2007, no such exclusion was provided for in this sub-section and the proceedings for assessment or reassessment or re-computation under section 147 were also considered as a proceeding for assessment.

There are large number of cases which fall under section 147. In order to further reduce further litigations, it is suggested that the proceedings under section 147 may not be excluded from the definition of "case".

Suggestion

It is suggested that (i) proviso of section 245(b) along with the Explanation (i) be omitted.

(b) Section 245A was amended w.e.f. 1.6.2010 to provide that the proceedings for assessment or reassessment resulting from search/ requisition would fall within the definition of a "case" which can be admitted by the Settlement Commission. Consequently, section 245C was amended to provide that the additional amount of income-tax payable on income disclosed in the application should not exceed Rs. 50 Lakhs, for an application to be made before the Settlement Commission in such cases.

In other cases, the additional amount of income-tax payable on income disclosed in the application should exceed Rs. 10 Lakhs, for an application to be made before the Settlement Commission.

Further, the Finance Act, 2011 has now provided that an application can also be made, where the applicant is related to the specified person (Mentioned in (iii) above) and in whose case also proceedings have been initiated as a result of search, provided the additional income-tax payable on the income disclosed in the application exceeds Rs. 10 Lakhs.

Suggestion

In order to further reduce litigations, it is suggested that the said limit of Rs. 10,00,000 may be reduced to Rs. 5,00,000.

A GLIMPSE OF INITIATIVES TAKEN BY DIRECT TAXES COMMITTEE

1. ACTIVITIES RELATING TO UNION BUDGET, 2012

- Budget Viewing Workshop and Live Webcast on Union Budget, 2012
- Articles on Direct taxes proposals of Union Budget, 2012 were published in the Budget Special Issue of CA Journal
- Suggestions invited from members at large with regard to tax proposals of the Finance Bill, 2012

2. REPRESENTATIONS / INTERACTIONS WITH GOVERNMENT (Ministry of Finance and Ministry of Corporate affairs)

- Submission of issues involved in convergence of Companies Act, IFRS, GST and DTC on request of Ministry of Corporate affairs.
- Issues faced by assessees in claim of TDS and e-filing of returns
  a) Interaction with Mr. Sanjai Verma, CIT of CPC Bengaluru
  b) Meeting with Standing Committee on TDS formed by Directorate of Income-tax (TDS)
  c) Submission of illustrative Master Guides in respect of circulars/notifications/ instructions issued by the CBDT to DIT (TDS)
- Guidelines for empanelment of an accountant, if any, adopted to conduct special audit under section 142(2A).
- Representation to Chairman, CBDT to curb malpractice of misusing the membership details of others.
- Preparation and submission of draft Single Direct Taxes Return Form for Direct Taxes Code
- Guidance by ICAI on Tax queries at the Special Camp hosted by the Income-tax Department at Vikas Bhawan, New Delhi.
- Inputs given to the Central Direct Taxes Advisory Committee (CDTAC) chaired by Shri. Pranab Mukherjee, Honble Finance Minister.
- Representation to Chairman, CBDT for extension of Due date of filing of Income Tax Returns.
- Submission of inputs on Tax Accounting Standard (TAS)
- Submission of Pre-Budget Memorandum, 2012
- Representation to consider the practical difficulties being faced by assessees due to generation of erroneous arrear demands by CPC

3. OTHER INITIATIVES

- Formation of groups to draft Forms and Rules relating to Direct Taxes Code Bill, 2010 to give a way forward to the CBDT
- Release of "Handbook on the Process of E-filing of Income Tax Returns"
- An Awareness Programme on Direct Taxes Code, 2010 for the finance executives of Public enterprises.
- Clarification regarding "specified number of tax audit assignments"
- *Formation Study group to* revive the Post qualification -Tax Management course.
- Providing subsidized subscription of material available in the site www.taxmann.com RS.3500/- instead of Rs. 7500/- to the members of the Institute.
- Application invited from members for assignment of forensic examination and analysis of seized electronic data by the Income-tax Department.

ABOUT ICAI AND DIRECT TAXES COMMITTEE 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 is one of the most important non-Standing Committee's of ICAI. The main function of the Direct Taxes Committee is to examine the direct tax laws, rules, regulations, circulars, notifications, etc., 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 is 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.

The Direct Taxes Committee comprises of members from all over the Country having vast experience and expertise in direct tax laws. For the year 2012-13, the Direct Taxes Committee is chaired by CA. Sanjay 'Voice of CA' Agarwal and consists of the following members:

Members of Central Council	
CA. Jaydeep Narendra Shah, President, ICAI	**CA. Subodh Kumar Agrawal, Vice-President, ICAI**
CA. Sanjay 'Voice of CA' Agarwal, Chairman	**CA. Dhinal Ashvinbhai Shah, Vice-Chairman**
CA. Jayant Gokhale	CA. J. Venkateswarlu
CA. Mahesh P. Sarda	CA. Manoj Fadnis
CA. M. Devaraja Reddy	CA. Naveen N.D. Gupta
CA. Sumantra Guha	CA. Vinod Jain
CA. V. Murali	
Government Nominees	
Shri Ashutosh Dixit, Joint Secretary, TPL-I, CBDT, Ministry of Finance	Shri Deepak Narain, Director, Department of Industrial Policy and Promotion , Ministry of Commerce and Industry
Shri Anil K. Agarwal, Delhi	
Co-opted Members & Special Invitees	
CA. Jinesh Vanzara	CA. Rajesh Shah
CA. V. Chandrasekaran	CA. Subhash Jain
CA. Santosh Choraria	CA. Girish Ahuja, Delhi
CA. R.S. Kalra, Jalandhar	

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