Bombay Chartered Accountants' Society

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Post-Budget Memorandum on Direct Tax Laws 2020-2021

Bombay Chartered Accountants' Society
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February 24, 2020

Ms. Nirmala Sitharaman

Union Finance Minister

Government of India

North Block

New Delhi - 110 001.

Respected Madam,

Sub.: - Representation on the Direct Tax Laws Provisions of the Finance Act, 2020

We compliment you for the focused and the longest Budget that was presented on 1st February. We also wholeheartedly support the various initiatives taken by the government in trying to establish a robust mechanism to boost the economy.

Introduction of the new tax regime under section 115 BAC of the Income Tax Act, 1961, with an objective to simplify the tax procedures, abolition of the Dividend Distribution Tax, Scope of Business Connection, Tax treatment of Provident Fund, Capital Gains etc.

We analysed and found that the majority of the new amendments made in the Income Tax Act, 1961 will jeopardise the interest of the tax payers.

We take this opportunity to make certain suggestions for rationalization of law, rectification of certain anomalies in the proposed amendments as also clarifying certain ambiguities so that the amendments meet the intended objectives of the government.

We would be happy to personally explain the suggestions if we are presented with an opportunity to do so.

For Bombay Chartered Accountants' Society,

CA Manish Sampat
President

CA Ameet Patel
Chairman, Taxation Committee

CC:

1. Shri Anurag Thakur, Minister of State for Finance
2. Shri Rajiv Kumar, The Finance Secretary
3. Shri Ajay Bhushan Pandey, The Revenue Secretary, Ministry of Finance
4. Shri Pramod Chandra Mody, The Chairman, Central Board of Direct Taxes
5. Shri Kamlesh Varshney, Joint Secretary, TPL-I
6. Shri Niraj Kumar, Director, TPL-I
7. Shri Pravin Rawal, Director, TPL-II

Sr No.	Amendment/ announcement made	Relevant clause of the Finance Bill/ Section of Income-tax Act, 1961	Provision and Issues	Rationale and Recommendations
1	New Tax Regime for Individuals	Section 115BAC (Clause 53)	Under the new tax regime, there is a restriction/denial of the most common and recurring deductions like deductions under section 80C, 80D, 80TTA, House Rent Allowance, Leave Travel Concession, Standard Deduction, interest on self-occupied/let out property, etc Further, the primary reason for introduction of this new personal taxation regime has been asserted to be "simplification of tax laws", however, ironically, it is resulting in a more complicated scenario, wherein, the individuals and HUFs, like the corporates, are faced with the difficult question and choice of opting for one of the taxation regimes, in order to optimise their taxes. Further, there is no clarity for employers as to whether the rates as per new taxation regime can be applied while deducting tax at source on salary payments.	**Recommendations**: (i) The new tax regime is resulting in a complicated scenario rather than simplifying the provisions. Providing an option will create lot of confusion to each of the assessee and does not appear to be providing substantial benefit to anyone **and hence the new tax regime should be omitted**. (ii) Instead, in order to give incentives to taxpayers, the **ceiling limit under Chapter VIA under the existing personal taxation regime should be increased to INR 3 Lakh**. **Alternatively,** (iii) The provisions of the **new taxation regime under section 115BAC should be simplified** and made more meaningful by removing the restrictions on claim of the commonly used deductions / exemptions. (iv) There should be **separate income slabs for senior and super senior citizens**. (v) The requirement to exercise the option to get assessed under section 115BAC annually seems too cumbersome, and hence the assessee should be allowed to exercise the

				option after 3 years. (vi) A suitable amendment in section 192 should be made allowing employer to deduct tax at source at rates prescribed under section 115BAC.
2	Abolition of DDT and moving back to classical system of dividend taxation in the hands of the recipient	Section 10(34)/(35), 57, 80M and 115O (Clauses 7, 40 and 59)	Considering the nature of dividend income which is in the nature of **distribution of the profit after payment of tax** by the company, even if the system is to be changed, rate of tax in the hands of the shareholder should not be more than 20% as is applicable in case of non-residents and foreign companies under section 115A. Changed system will only benefit non-residents and foreign companies (as they can now claim treaty benefits on dividend income, which was not possible earlier) and is against the interest of residents and therefore, the same is not justified considering the present rate of personal taxation which goes in case of residents to as high as 42.74%.	**Recommendations**: (i) The dividend tax rate should be a concessional rate – dividend income upto INR 10 lakhs should be taxed @ 10% and beyond that @ 20%. (ii) Deduction of expenses pertaining to dividend income should be allowed under section 57 and there should be no restriction on allowance of interest expense. (iii) To avoid cascading effect on dividend received from foreign companies, scope of section 80M should be widened to cover dividend received from foreign companies as well (as was already the case under existing provisions of section 115O). (iv) Further, deduction under section 80M is available only when the company is paying tax under normal provisions of the Act. No corresponding amendment is made in section 115JB to allow for such deduction for receipt of dividend income while computing the "Book Profit" under section 115JB leading to the dividend income getting subjected to MAT. Thus, a suitable amendment is required in section 115JB.

				(v) Further, deduction similar to old section 80L should be reintroduced allowing the taxpayer to claim a standard deduction against dividend income.
3	Tax treatment of employer's contribution to recognised provident fund, superannuation funds and national pension scheme	Section17(2)(vii) and (viia) (Clause 13)	The proposed amendment in section 17(2)(vii) is leading to double taxation in the hands of an employee because as per section 17(1), the full amount of contribution made by the employer to NPS is already taxable in the hands of the employee. Further, contribution to recognized provident fund is also taxable where it exceeds 12% of the salary of the employee. When there are limits for contribution to each of the fund, there is no rationale to impose an overall limit only for the reason that certain employees are able to structure their salary to avail maximum advantage.	**Recommendation**: This amendment should be omitted.
4	TCS	Section 206C (Clause 93)	TCS on remittances sent under the LRS Scheme is with the objective of widening and deepening the tax base. While the objective is laudable, such a provision to gather information should be introduced only if the information is not available already or cannot be easily gathered from existing mechanism in law. Following monitoring mechanisms are already in place for LRS remittances: 1. The remittances are made through bank accounts to which PAN are linked. 2. Each LRS remittance requires the remitter to mandatorily mention his or	**Recommendations:** (i) The provisions of TCS on remittances sent under LRS scheme should be deleted. If required, a statement can be obtained of the remittances from the Authorised Dealer by way of Annual Information Return under Section 285A. (ii) Instead of providing for collection of tax at source, a mechanism for reporting of transactions by Authorised dealers or of self-declaration giving his PAN and other particulars should be introduced on the lines

			her PAN (AP DIR Series Circular No. 32 dated June 19 2018). 3. Banks remitting funds under LRS are required to provide a PAN-wise list of remittances on a daily basis to the RBI (AP DIR Series Circular No. 23 dated April 12 2018). 4. For most transactions under LRS, the remitter is required to obtain a Form 15CB from a CA and report the remittance to the tax department under Form 15CA. With all the above mechanisms already in place, it would be very easy for the tax department to collect information from banks or RBI for each PAN which they are already not receiving. As the bulk of these transactions are towards payment of educational fees, travel or to transfer funds to one's own overseas account, TCS would result in taxing transactions which have no income element. As a TCS of 5% is proposed on overseas tour packages also, the tax department would already have the information of funds spent for overseas travel. Having both these provisions in place would lead to a double-whammy where funds are sent under LRS for overseas tour packages and can result in 10% of the funds being collected upfront by the tax department even where there is no income element.	of existing compliance forms 15CA, 15CB

5	Residency provisions	Section 6 (Clause 4)	Citizenship leading to determination of tax residency in India is unreasonable and unjustified. It may lead to persons give up Indian citizenship. CBDT clarified on 2nd February that in the case of such persons, only their Indian income will be taxed and income earned outside India will not be taxed. The above provision is an anti-abuse provision and is not intended to cover bona fide workers in foreign countries. The intention of the legislature while inserting this amendment is to tax non-residents on the income arising in India. It is pertinent to note that prior to this amendment, there are various provisions in the Act which already provide for tax on Indian income of a non-resident.	**Recommendations:** (i) This amendment be deleted since the existing provisions of section 5 and 9 already provide for tax on Indian income of a non-resident. (ii) **Alternatively**, the section be amended to specifically provide that the section shall cover only stateless persons. (iii) Without prejudice to above, it needs to be clarified that in case of a deemed resident, the reporting of foreign assets or financial interest shall not be required in the Indian income tax return.
6	Increase in tolerance limit	Section 43CA, 50C and 56(2)(x) [Clauses 22, 27 & 29]	The tolerance limit of 5% provided for has been increased to 10%. It is felt that in view of various practical issues, the tolerance limit should be further liberalised.	**Recommendations:** The tolerance limit of 5% provided to be increased to 15% in line with the Supreme Court's decision in 199 ITR 530
7	"Deemed residency" for non-resident individuals	Section 6 (Clause 4)	The objective of bringing "stateless persons" who are Indian citizens within the tax net will be more than achieved with the proposed amendment to lower the number of days under Explanation 1(b) to Section 6(1) from 182 to 120 days. Many NRIs who are avoiding Indian residential status will anyways become resident due to introduction of this provision. The impact of this amendment should be studied before introducing a deemed	**Recommendations:** (i) Deemed residential status provisions should be deleted. (ii) **Alternatively**, the provisions should be deferred for at least a period of 5 years to study the impact of the provisions introduced vide amendment to Explanation 1(b) of Section 6(1).

			residential status based on citizenship. Introduction of this proposal could result in Non-resident Indians to reconsider holding their Indian citizenship in order to avoid the deeming residency provisions. The Press Release issued on 2nd February, 2020 has raised doubts about how bonafide employees will be defined.	(iii) Without prejudice to the above, while the said Press Release seeks to clarify that this provision is intended to cover only such individuals who migrate to low or no tax jurisdictions to avoid Indian taxes, and therefore, only Indian sourced income would be subject to tax in India, it would be advisable if specific clarity in the provision itself is provided to clarify that: o only such individuals who are "non-residents" of all countries are intended to be covered; and o individuals with a valid tax residency certificate or a work permit would be outside the ambit of this provision.
8	Enhanced scope of business connection	Explanation 3A to section 9(1)(i) (clause 5)	The objective of this provision is to add income earned from the stated transactions to the income attributed to a business connection; irrespective of whether such business connection is on account of a Significant Economic Presence or not. Such a provision would have undesirable impact considering that most non-residents covered by this provision may not have a business connection in the absence of a Significant Economic Presence. Equalisation Levy is already in place to collect tax on revenue from specified services being online advertisement. Further, some of the terms used in the section are ambiguous and may lead to unintended consequences or harm to the assessees.	**Recommendations:** (i) The enhanced attribution principle should be linked only to business connection by way of Significant Economic Presence and that too after getting feedback from all stakeholders. (ii) The present provision linking the provision to business connection which can be formed without a significant economic presence must be deleted. (iii) In order to avoid ambiguity, terms such as 'resides' 'customer' and 'data' should be adequately defined. Further, goods and services sold through use of data should be first specified to cover only transactions which have large revenue at the time of introduction and in line with Equalisation Levy.

9	Charitable Trusts	Section 10(23C), 10(46), 12A, 12AA, 12AB, 80G (Clauses 7, 9, 11, 12, 17, 33, 61, 94, 96 and 99)	(i) There are already existing provisions in the Act which can revoke registration due to powers conferred upon the Commission of Income Tax (Exempt). The CIT can check the activities of the trusts and further in case of amendment in the activities of the trust and it's deed, the Trust has to eventually apply for re registration u.s 12A(1)(ab). Until this amendment, approvals under section 80G were kept permanent, but now due to re registration under section 12AA/new registration under section 12AB, approvals under section 80G will also need to be re-applied for. (ii) The amendment requiring charitable trusts to report certain information with a view to provide pre-filled information to donors will only increase the compliance burden on trusts which are doing social service. In particular, small NGOs will be put to great hardship especially since penalty has also been prescribed for non compliance.	**Recommendations:** (i) Since, the provisions would result in further harassment and further delay in processing of applications for recognition under section 80G till the time re-registration of charitable trust is granted, this amendment should be removed in totality. **Alternatively,** a threshold may be specified for the trusts to which the amendment would apply - for eg: Corpus, Total Donation, Net worth, Individual Donation etc. (ii) Conditions should be prescribed for reporting of donations by trusts. Smaller donations / smaller trusts should be exempted from these reporting requirements. **Further, the same provisions must be made applicable to political parties without any threshold.**
10	Stamp duty valuation	Section 55 (Clause 28)	There are enough existing provisions in the Act to protect the revenue against the claim made by the seller for the cost of acquisition.	**Recommendation:** The amendment should be scrapped totally & the original provisions should be restored.
11	Tax Audit provisions	Section 44AB (Clause 23)	The amendment is applicable only to assessees having a business. Professionals are not covered by the amendment. Also, the threshold of 5% applies to all amounts paid / received by the assessee. As a result, even	**Recommendations:** (i) Higher threshold of tax gross receipts should be introduced even for professionals so that small professionals can take benefit of the

			capital payments / receipts would get covered for the purpose of determining the threshold.	same. (ii) Condition of 5% should apply only to amounts debited / credited to P&L Account and not to all payments / receipts
12	ESOPs	Sections 140A, 191, 192 (Clauses 68, 71, 72 & 73)	The amendment is welcome as it defers the outflow of tax and this will be of great help to employees of start ups. However, the provisions are different from those contained in section 45(2).	**Recommendation:** In order to avoid unnecessary hassles to the taxpayer employees, it is recommended that this scheme be enacted on similar lines as section 45(2) wherein the tax arises in the year of sale of the converted capital asset even though the value is based on the date of conversion. In other words, ESOPs should be taxable in the earliest of the 3 scenarios but the value should be based on the value of the ESOPs on date of the grant and due amendment should be made in section 17 in place of section 192.
13	TDS on e-commerce transactions	Section 194-O (Clause 84)	While transacting with an e-commerce participant, the e-commerce operator would be reducing the amount of his commission or margin from the final settlement amount. This amendment casts an onerous compliance burden on the e-commerce operator at a time when the sale of goods may be subject to GST.	**Recommendation:** This amendment should be scrapped totally.
14	Penalty on false entries	Section 271AAD (Clause 98)	This will create multiplicity of provisions in the law. There are already several provisions in the Act which cover such violations: Section 69 – Unexplained investments	**Recommendation:** The amendment should be scrapped totally.

			Section 270A – Penalty for under reporting and mis reporting of income Section 271AA - Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions	
15	Tax payer's Charter	Section 119A (Clause 64)	Including the taxpayer's Charter within the Act itself is a welcome move. However, it is imperative that views of stakeholders must be taken into consideration before notifying the Charter.	**Recommendations:** (i) The draft Charter should be made available online and views of the public must be sought before it is finalised. (ii) Accountability/penal provisions must be incorporated in the same for the departmental officers.
16	Faceless appeals		The government's initiative of reducing the need for physical interaction between the tax payer and the tax department through e-assessments is laudable. This initiative is in its formative stage and there are several teething problems that are yet to be resolved. Now, it is proposed to bring in faceless appeals. While the idea is excellent and in line with the stated objective of reducing physical interaction and thereby reducing corruption, it is felt that we are not yet ready for faceless appeals. We need to first be completely successful with faceless assessments.	**Recommendations:** (i) The proposal to make appeals faceless should be deferred for at least 2 more years till such time as all stakeholders are comfortable with faceless e-assessments. (ii) Whenever this is rolled out, it should be optional and the appellant must get an option to explain his case in person if he so desires. (iii) The scheme should be first placed in public domain for discussion and suggestions before it is implemented.

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Bombay Chartered Accountants' Society

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