POST BUDGET MEMORANDUM 2022-23

Bombay Chartered Accountants' Society

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February 21, 2022

Shri. Mohapatraji,
Chairman
Central Board of Direct Taxes

Respected Chairman Sir,

Sub.: - Representation on the Direct Tax Law Provisions of the Finance Bill, 2022

On behalf of Bombay Chartered Accountants' Society we express our gratitude for giving us an opportunity to share our views and make our representation on a few important amendments proposed in the Income Tax Act through the Finance Bill, 2022.

The taxation Committee of our Association after a detailed discussion felt that some of the proposed amendments may lead to unnecessary litigation or are not clear, and some which are very harsh on taxpayers.

We take this opportunity to make certain suggestions for rationalizing the 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.

The Pre-Budget Memorandum in line with above is submitted herewith.

For Bombay Chartered Accountants' Society,

CA Abhay Mehta	CA Deepak Shah	CA Anil Sathe
President	Chairman	Co-Chairman
	Taxation Committee BCAS	

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Part I - Direct Tax

Request for liberal and lenient treatment for Charitable Trusts

Charitable and religious trusts have done laudable work in supplementing the welfare efforts of the state. This will be apparent from their contribution in the Covid 19 pandemic. These entities are run largely by volunteers who contribute their mite, with no or small monetary reward. It is therefore essential that these trusts be treated differently from other assesses. Leniency needs to be shown in regard to, inadvertent infringements of law and procedure which are technical in nature. The penal consequences if any should be with an idea to reform and rectify rather than consequences like cancellation of registration which can cause permanent damage to the activities of the trust.

Sr. No.	Amendment/ announcement made	Relevant clause of the-Finance-Bill/ Section of Income-tax Act,1961	Provision and Issues	Rationale and Recommendations
1	**Charitable Trusts**			
1A	Maintenance of prescribed books of account and documents at prescribed place	Section 12A(1)(b) [Clauses 6 & 4(b)(iii)]	An additional condition has been inserted which makes the eligibility to exemption under section 11 subject to its books of account and other documents being maintained in the form, manner and place prescribed. A similar amendment has been made by way of substitution-of the 10th Proviso to section 10(23C) **Issues**: This amendment will require all Charitable trusts who seek exemption under section 11 to maintain (a) books of account and documents (b) in such form and manner (c) at such place as may be prescribed. A majority of charitable trusts run their administration through honorary services of volunteers. These trusts would be located across the length and breadth of the country, at places which may not have the requisite infrastructure/facilities to ensure compliance with conditions.	**Rationale:** The existing provision provides for the conduct of an audit by an accountant mentioned in section 288. Further a comprehensive audit report in form 10B has already been prescribed. In the circumstances an audit would ensure proper-maintenance of accounts as well as the documents necessary to verify the claim of an exemption Making a further amendment to require the trust/ institutions to maintain elaborate record would impose a heavy burden which is uncalled for. **Recommendation:** The condition requiring the trust to maintain accounts in a prescribed form should be deleted. Alternatively, if provision for maintenance of accounts and record in a specified manner is to be prescribed, it should be only for Charitable institutions whose gross receipts exceed the threshold limit, of

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			Many charitable trusts who have received a renewal of registration or a provisional registration, have had-significant conditions imposed on them particularly in regard to maintenance of accounts for separate streams of income/activity. A violation of the maintenance of books/record as prescribed would result in a denial of the exemption. For a technical infraction, the consequence is catastrophic.	Rs 5 crore, which is the same as that prescribed for educational/medical institutions which claim exemption under section 10(23C)(iiiad)/(iiiae). Such large trusts would have the wherewithal to comply with the provision. Further, non-compliance should not result in a denial of the exemption, but only levy of a penalty commensurate with the gross receipts/turnover.
1B	Cancellation of Registration under Section 12AB	Section 12AB (4) and (5) [Clause 7]	The amendment significantly increases the powers of the PCIT/ CIT to cancel registration on the occurrence of additional specified violations. The additional violations specified are (a) Application of any part of its income for other than objects of the trust (b) Application of any part of income for private religious purposes (c) Income from profits and gains of business not incidental to attainment of its objects (d) Non-maintenance of separate books of account for business incidental to attainment of objects (e) Activity not being carried on in accordance with all or any conditions subject of which trust was registered A similar amendment has been proposed by way of substitution of the 15th proviso to section 10 (23C) - **Clause 4(b) (iv) of Finance bill** **Issues:** The amendment, increasing the ambit of specified violations is uncalled for. This is for the following reasons	**Recommendation:** Cancellation of registration should only apply where activities of the trust are not genuine, or in the event of non-compliance with requirements of any law material to attainment of its objects.

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			(a) These events, (defined as specified violations) are in most cases are restricted to specific years or are aberrations. Cancellation of registration which would affect the trust in the year of occurrence of such a violation and subsequent years, would cause grave prejudice and permanent damage to the charitable institution especially if the violation is in significant as compared with the over all activities of the trust. (b) What constitutes a "business" particularly in the context of the proviso to section 2(15), is already a matter of substantial debate. The terms "business" and "incidental to objects" are both amenable to different interpretations, which may vary from person to person. In fact, the interpretation of the proviso to section 2(15) is already being considered by the Supreme Court in a batch of appeals. Further the manner of computation of income if the proviso to section 2(15) read with section 13(8) is attracted, has already been introduced. In the circumstances providing for a cancellation of registration which would affect trusts particularly educational and medical trusts permanently is uncalled for. (c) Providing for cancellation in the event of the trust not complying with the conditions of registration is extremely harsh. Earlier the registration to a charitable trust was granted if the objects were charitable and the activities were genuine. In the current scenario there is an in-depth examination of the activities. In the recent past in the case	

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			of trusts whose registration has either been renewed or fresh registration has been granted, a large number of conditions have been imposed. Some of these conditions are entirely impractical and not capable of compliance. For instance, the requirement to intimate the PCIT/CIT about the transfer of assets, prior permissions in many cases are very harsh conditions. ***The BCAS has already made a representation requesting reconsideration of the imposition of such conditions. (Copy annexed)*** In the circumstances, cancellation of registration for non-compliance with the conditions is totally uncalled for. (d) If there is application by the Charitable institution of its income or property for persons specified in section 13(3), or there is an infringement of the provisions of section 11(5) a provision to tax such income at the specified rate (Section 115BBI) has already been introduced. For application of income for the benefit of specified persons a penalty under section 271AAE has also been introduced. (e) As far as the application for other purposes other than those covered by objects, is concerned such a violation would also entail a denial of exemption. Consequently, a penal consequence for all the specified violations has already been provided for.	

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			(f) A cancellation of registration causes permanent damage to the interest of a charitable institution and would attract tax on accreted income. This is a power that should be used very sparingly, incases where the infringement is of a significant amount and recurring.	
1C	Application of income to be allowed only if actual payment is made	Section 11 [Clause 5(b)(c)]	The proposed amendment is by virtue of insertion of an explanation to section 11(7). The amendment provides that, only sums actually paid will be regarded as application of income from assessment year 2022-23. A similar amendment has been made by insertion of an explanation below the 23rd proviso to section 10(23C)- **Clause 4(b)(vii) of Finance bill** **Issues:** This amendment would create substantial hardship to Charitable trusts This amendment would mean that the income is accounted for on mercantile or accrual basis while the application would be on cash basis. This would significantly distort the matching principle which is the basis of accrual/ accounting. It would also create substantial hardship for Companies incorporated under section 8 of the Companies Act 2013 (corresponding to section 25 of the Companies Act 1956), which would be bound to maintain their accounts on mercantile basis. Since the amendment is effective from assessment year 2022-23, trusts will have a period of only two months to pay out their expenses, which would create difficulty.	**Recommendation:** (a) The amendment be deleted, OR (b) Alternatively, a provision akin to section 43B be incorporated whereby, expenses actually paid before the due date of filing of return are considered as application, and (c) the amendment be made applicable from assessment year 2023-24

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			The provision would require charitable trusts to compute income on cash basis while their accounts continue to be on mercantile/accrual basis. This will cause undue hardship on charitable trusts which are already saddled with a substantial compliance burden. When the government itself is desirous of all its departments as well as local bodies to maintain accounts on accrual basis, imposing a cash basis on charitable trusts is uncalled for.	
1D	Penalty on Benefit to Specified persons	Section 271AAE [Clause 76]	A penalty under section 271AAE is proposed whereby a Charitable trust which applies its income for the benefit of specified persons would be liable to a penalty equivalent to the amount of income applied for the benefit of specified persons. **Issues:** A charitable trust which applies its income for the benefit of a specified person is already subjected to a tax liability of 30%under section 115BBI. A penalty alongwith such a tax liability will result in an obligation on the trust of 130% (100%penalty and 30% tax). This may impact charitable institutions so severely that they may have to stop their charitable activity.	**Recommendation:** (a) the provision for levy of penalty be deleted **ALTERNATIVELY** (b) if the provision is to be retained, the quantum of penalty should be calibrated to a lower percentage say 10% (c) Section 273B be amended to include a reference to section 271AAE, so as to avoid levy of penalty where there is reasonable cause.
1E	Tax on Accreted Income	Section 115TD [Clause 31]	The proposed amendment expands the scope of the provision to those trusts that are claiming exemption under sections 10(23C)(iv),(v)(vi)and(via) **Issues:** The tax under this section may become applicable when the registration under section 12A/12AB becomes operative on account of cessation of an approval of the registration under various clauses of section 10(23C), and vice versa.	**Recommendation**: While this clearly is not the intention, a specific clarification to that effect may be inserted.

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1F	Loss of Exemption on investment in other than prescribed modes	Section 13(1)(d) [Clause 8]	Section 13(1)(d) is being amended to propose a denial of exemption to the extent of deposit which contravene the provisions of section 11(5). **Issues:** These deposits would not have been treated as application of income in earlier years or in the relevant year.	**Recommendation:** The denial of exemption should be restricted to the income earned on such investments, with the quantum of aggregate denial in all the years being restricted to the quantum of investment
1G	Tax on Specified Incomes	Section 115BBI [Clause 28]	Section 115BBI provides for a tax on specified income. Clause (a) thereof, provides for taxing income accumulated where such accumulation, is not allowed under any specific provision of the Act. **Issues:** There is no clarity about which specific provision of this Act, is contemplated. An accumulation up to 15% is allowed without fetter, and an accumulation beyond that limit is specifically permitted under section 11(2), subject to the conditions prescribed therein. Any other accumulation beyond these limits is impermissible and no exemption is allowed.	**Recommendation:** This clause should be deleted from s. 115BBI
1H	Alignment of provisions of section 10(23C)(iv), (v), (vi) and (via) with section 11	Section 10(23C) [Clause 4(b)]	The cumulative effect of the amendments is that the exemption under sections 10(23C)(iv), (v) (vi) and (via), are now almost identical to the exemption under section 11. **Issues:** On account of the number of clauses, the 23 provisos and the explanations there under section 10(23C) has become unwieldy and difficult to comprehend and analyse particularly for a person not conversant with interpretation of tax laws. Trustees of charitable institutions and the persons associated with such entities are required to refer to these provisions.	**Recommendation:** (a) These clauses namely (iv), (v), (vi), (via), be deleted (b) Simultaneously, an automatic registration under section 12AB be granted to such trusts in place of their recognition under the above clauses. This will enable them to claim an exemption under section 11.

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2	Cash Credit	Section 68 [Clause 17]	**Provision:** A proviso is now inserted to provide that where a credited sum received from any person consists of loan or borrowing or any such amount by whatever name called, assessee's explanation about the nature and source of such sum shall not be deemed to be satisfactory unless an explanation is also provided about the nature and source of the person in whose name such credit is recorded in the books of the assessee to the satisfaction of the Assessing Officer. **Issues:** • The requirement to prove nature and source of source of loan or borrowing or any such amount taken by the assessee will have various difficulties, some of which are given below: • i) The onus is on the assessee to show the nature and source of any person whether a resident or a non-resident from whom he has taken loan or borrowing. Alender may not be willing to disclose the details of his income, assets, net worth, to the assessee for reasons of confidentiality. ii) The assessment proceeding normally takes place after a year or two. It is likely that the loan/borrowing is repaid prior to commencement of assessment proceeding. Assessee may find it difficult to get all the relevant information from the lender due to change of lender's address, spoiled relationship for reasons such as delayed repayment etc. or for any other reasons.	**Recommendation:** Applicability to non-resident lender • The proposed amendment should not apply if the loan or borrowing is from a non-resident as the inward remittance is received through banking channel which is monitored and regulated by the RBI and the banks. Identical proviso applicable to closely held company for proving source of source of receiving share application money etc. does not apply to non-resident. Applicability to resident lender • Presently, the assessee has the onus to satisfy the identity, creditworthiness and genuineness of the lender at the time of assessment proceeding. However, it is difficult for the assessee to prove the source of the lender. Only the lender would be in a position of explain his source. • Once the PAN of lender is given to the tax authority, they have all the access to the lender's return of income, money transactions reflected in Annual Information summary and Tax information summary. Once, the assessing officer has all these information available with him, he can certainly satisfy himself as to the capacity of lender. For any reason, if the assessing officer is not satisfied, he can send the notice to the lender asking for specific information.

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			iii) The lender may not be willing to give all the details such as his bank passbook, source of loan etc. to the assessee. iv) It is possible that a lender may not give loan if the borrower insists for obtaining evidences of his source such as his income,return, assets etc. at the time of borrowing money. This will have an adverse impact on the business and will also affect the ability of the businessman to carry on his business smoothly. v) The proposed proviso will also apply to loan or borrowing taken from banks, financial institutions or on issue of debentures etc, creating great hardship.	One can understand, if the onus to prove source is applied in case of loan or borrowing from a related party. But proving source of source of an unrelated lender who has lent money to the assessee would place too onerous a burden on the assessee. The assessee should only be called upon to co-operate with the department and make bona fide attempt to gather the information from the lender. In view of the above difficulties, the proviso should be deleted.
3	Amendment to section 37	Explanation to section 37 [Clause 12]	**Provision**: • The proposed amendment now specifically provides that expenses which are offences, either as per Indian law or as per foreign law will also be disallowed. • Further, it proposes to disallow expense incurred to wards compounding of offences under any Indian or foreign law. • It also clarifies that any benefit or per-quisite to any person, where acceptance of such benefit is in contravention with the guidelines/ laws-regulating the conduct of such person,will also be disallowed. • In the Explanatory Memorandum it has been stated that the issue is covered in favour of the Revenue by the decision of the Supreme Court in the case	**Recommendation:** • Violation of foreign laws should not be covered by the amendment. • It is also recommended that expenditure paid outside India to regularise any defaults under foreign law should be fully allowable as deduction • Only statutory guidelines by which the payee is governed should be covered by the amendment. • If at all an amendment is required to be made, it should only be prospective from FY2022-23 (AY2023-24)onwards. • Further, it should be clarified that for the earlier years,no reassessment or rectification can be done by the tax authorities on the basis of this amendment.

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			of CIT vs K Srinivasan (83ITR 346) and that the decisions of the Rajasthan High Court and Bombay High-court are per in curium. If that is the position, there is no need to make a retrospective amendment and follow the judicial process. **Issues:** • Most resident taxpayers, professionals and Assessing officers would have very limited understanding of foreign law. • Interpretation of foreign law cannot be a matter of interpretation by Assessing officers. This is likely to lead to litigation. • Compounding at times may not necessarily be for a confirmed violation, but may be for a possible violation. This will give rise to litigation, as to whether a violation was actually committed or not. • The payer generally would not be aware of all the guidelines governing the payee, particularly those which are not statutory in nature. • The clarificatory nature of the amendment may give rise to reassessments and would increase litigation substantially.	
4	Provisions relating to taxation of income from transfer of virtual digital assets	Sections 2(47A) and 115BBH [Clauses 3, 28 and 59]	The definition of a virtual digital asset covers within its scope assets that are generated through cryptographic means or otherwise providing a digital representation of value or a store of value. The term is too broadly defined and could even include assets that are generated otherwise than through cryptographic means, for example, assets like online loyalty programmes like frequent flyer	**Recommendation**: • The meaning of virtual digital asset is required to be more specific to target specific asset class only. • The definition should exclude digital assets that are not generated through cryptographic means, like loyalty points and flyer miles.

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			miles or credit card reward points, which may not be intended.	
5	Provisions relating to taxation of income from transfer of virtual digital assets	Section 2(47A) [Clause 3]	The proposed section treats a non-fungible token (NFT) in the same manner as other virtual digital assets which may not be justified. In contrast to other crypto assets, a NFT is a non-interchangeable unit of data stored on a blockchain, a form of digital ledger, that can be sold and traded. NFT is usually linked to a specific asset (like a painting or song, Or a particular football game or an event). Since a NFT is unique and not fungible, it provides value as a collectible through releasing a limited number of such tokens by their creator. Though NFT uses block chain technology to provide authentication of creation and ownership, it is based upon value derived from underlying assets which are themselves not crypto assets.	**Rationale:** • The tax treatment of the consideration for transfer of NFTs should not be any different from that of the assets to which they are linked. For instance, if the consideration received for transfer of a painting held as a capital asset that would be chargeable under the head Capital Gains, there would be little justification to treat the consideration received by the owner of an NFT (which is linked to the painting and held by him as a capital asset) differently. **Recommendation**: NFTs which are linked to underlying assets may be excluded from the definition of virtual digital asset.
6	Provisions relating to taxation of income from transfer of virtual digital assets	Section 115BBH [Clause 28]	While computing the income on transfer of a virtual digital asset, the assessee is entitled to deduct the cost of acquisition of the asset. However, there is no specific provision for determining the cost of acquisition of a crypto asset obtained by a person who mines those assets though he incurs substantial expenditure in such mining operations.	**Rationale**: • A specific provision permitting expenditure incurred on mining of virtual digital assets by an assessee as the cost of acquisition of virtual digital assets received by him would avoid unnecessary litigation. **Recommendation:** • It may be clarified that where a virtual digital asset is mined, the expenditure incurred in mining such assets will be taken as the cost of acquisition of such virtual digital asset.

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7	Provisions relating to taxation of income from transfer of virtual digital assets	Section 115BBH [Clause 28]	It is provided that while computing the income from transfer of a virtual digital asset, no deduction of any expenditure, or allowance or set off of any loss shall be allowed. However, there is no clarity on whether a loss from a transfer of a virtual digital asset can be set off against the gain from another transfer of such assets.	**Rationale:** • If the intention is to deny set off of losses and gains from transfer of virtual digital assets in the same year, such a prohibition is unjustified. Even for income from lotteries, card games, gambling or betting, section 74A(1)(before its omission) provided for set off from the same source. Also, loss from speculation business is allowed not only to be set off but also to be carried forward. It is unjustified to treat a loss from the transfer of a virtual digital asset more adversely than these other sources of income. **Recommendation:** It may be clarified that a loss from a transfer of a virtual digital asset can be setoff against the gain from a transfer of another virtual digital asset.
8	Provisions relating to taxation of income from transfer of virtual digital assets	Section 194S [Clause 59]	Provisions have been introduced imposing a liability on the person responsible for paying consideration for transfer of a virtual digital asset to deduct tax at source. However, where such transfer is transacted on a crypto exchange, it is unclear whether the liability to TDS is on the exchange or the buyer of the virtual digital asset and how they will discharge the same.	**Rationale**: • Clarity on the person liable to deduct tax at source is essential to facilitate compliance with the TDS provision. **Recommendation:** The person responsible for TDS obligation on the payment of consideration for transfer may be specified in cases where the transfer of a virtual digital asset is transacted on a crypto exchange.

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9	Updated return of income can be furnished within two years from the end of relevant Assessment year, whether or not original re-turn of income was filed.	Sections 139(8A), 140B [Clauses 38 and 39]	• Updated return cannot be filed if it is a loss return or the updated return has the effect of decreasing the total tax liability or increasing the refund claim as compared to the original return filed. • Additional income tax of - 25% of 'aggregate tax and interest' is payable if updated return is filed after the expiry of time limit to file belated/revised return but within one year from the end of the relevant Assessment Year and - 50% of 'aggregate tax and interest' payable if updated return is filed thereafter. **Issues:** • The additional income tax is very high, especially when it is a genuine error, particularly as this is in addition to interest • The due dates for filing tax returns are extended in past two years. Typically, any error/omission in tax re-turn is noticed while filing the tax return of the next year, but the time limit for filing revised return has expired by then. • Only credit of tax deducted or collected at source, which was claimed in the earlier return is allowed in the updated return	**Rationale:** • The scheme of updated return is introduced to encourage assesses to correct mistake in return filed and minimize tax litigation. **Recommendation:** • Updated return be permitted even if the original return filed is a loss return. • Updated return should be permitted even after intimation u/s 143(1) issued after making some prima facie addition to income. • Updated return should be permitted on payment of additional tax of 50%, when mistake in return is noticed during the course of assessment proceedings. • Amount of additional tax payable be reduced to 10% of the aggregate tax payable if updated return is filed with in one year from the end of the relevant assessment year and 20% of the aggregate tax payable if updated return is filed thereafter. • No interest should be included while calculating additional tax. • Credit for any tax deducted or collected, which relates to the income declared in the earlier return, but inadvertently not claimed in the earlier return ought to be permitted while filing updated return.

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				• Revised return should be permitted to be filed within a period of 12 months from the due date of filing the return of income under section 139(1) of the Act, as against the exiting time limit of 31st December of the assessment year.
10	TDS on benefit or perquisites	Section 194R [Clause 58]	**Provision:** Newly inserted section 194R casts an obligation on person providing any benefit or perquisite, whether convertible in money or not, to any resident, arising from its business or exercise of profession shall deduct tax at source at the rate of 10% on such benefit exceeding Rs. 20000. **Issues:** • There are day-to-day business transactions wherein a manufacturer or a distributor gives certain incentives for selling their products. Such incentives are transactions in the usual course of business and not for giving any benefit to the distributor or the reseller. For example, a manufacturer may in the course of its business sell 10 units for full price and as an incentive also give 2 units without any charge. In such a case, the reseller on sale of such 12 units will earn income which will be offered to tax under section 28(i). Now, if the 2 units are treated as a benefit received by the reseller there will be a double tax under section 28(i) as well as 28(iv). Similar issue will also arise in a case where interest free loan is given or rent is not collected from subsidiary company for using premises of the holding company. The	**Recommendation:** • It should be clarified that he provision to deduct tax at source will not apply to a regular sale transaction when an incentive in the form of benefit is provided by a manufacturer toa distributor or by a distributor to are seller as such an incentive is not to benefit the recipient party but to increase the sales of the product. • Clarifications must be issued about the practical difficulties as stated above which will arise at the time of application of the proposed section and such instances should be specifically excluded from the application of the proposed section. • Manner of determining the value of benefit or perquisite should be clarified. • In view of all the difficulties narrated above, it is suggested that the section should be deleted. **ALTERNATIVELY** • The manner, mechanism and valuation methodology should be given in detail if the law is to be retained to avoid any ambiguity while

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			possibility of double tax will arise because assessing officer will try to tax the benefit reflected in Form 26AS though the assessee has disclosed profit on the sale of benefit received by him. Secondly, it is possible that the assessing officer may not give credit for with held tax as the value of benefit is not included in income. Therefore, the withholding provision should apply only where a person receives personal benefit or perquisite unconnected with his business. • Section 194R does not contain guidance as to the point of time when tax has to be deducted. For instance, a company may give coupons to its customer with a validity of six months which can be used to purchase another item at a discount. In such a case, the customer may or may not redeem the coupon within the prescribed time. Further, it is difficult for the company to ascertain whether such customer is a person who is engaged in any business or profession. • Section 194R does not provide any guidance as to how the value of benefit or perquisite should be calculated by the deductor. First proviso to the proposed section casts an obligation on the person providing benefit or perquisite to ensure that tax has been paid before releasing the benefit. There is no mechanism or guidance as to how will it be ensured that the taxes are paid by the recipient of benefit.	applying the proposed amendment with regard to various real-life situations. • The limit of Rs. 20,000 should be enhanced to Rs. 50,000 so as to avoid the burden of deducting tax on small businessmen and also because exemption upto Rs. 50,000 is already given in Section 56(2)(x). • It may also be considered whether instead of having provisions for deducting tax at source, separate reporting requirement applicable to persons providing benefit or perquisite will serve the purpose of the Government. • <u>This provision should come into force from 1st July 2022.</u>

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			• There is no clarity on the time of deduction of tax and time to make payment to the Government. For example, where the assessee takes the dealers on a tour, expenses incurred would be known only after the tour has ended or receiving bills after lapse of some time. • It would be an onerous burden on the giver of benefit to comply with the TDS provision in view of few of the practical difficulties narrated above. • As per the Finance Bill, this provision applies effective from 1st April 2022. However in the explanatory memorandum the effective date is given as 1st July 2022.	
11	Receipt due to COVID-19	Section 56(2)(x) [Clause 16]	**Provision:** Any sum of money received within 12 months from the death of a person due to COVID-19 by a member of the family of the deceased would be exempt wholly if it is received from the employer of the deceased and upto Rs. 10 lakhs if it is received from any other person. This exemption would apply from assessment year 2020-21. **Issues:** • The family members of the deceased may receive money in relation to death due to Covid-19 after sometime and not necessarily within a period of 12 months. • Proposed amendment restricts the exemption only if it received by the family as defined in Explanation. 1 to section 10(5). The definition of family given therein includes spouse, children and dependant parents, brothers	**Rationale**: • The various restrictions such as timeline of 12 months, dependency of the family member on the deceased individual, etc. defies the noble intention to help the person who has lost parents or earning member of the family. A once in a 100 years calamity, which may have deprived a family of its earning member, should be seen with a humanitarian approach and exemption should be given with grace and with utmost clarity so that the recipient is not dragged into litigation. **Recommendation**: • Exemption be given in respect of money received by family members of the deceased even after a period of 12 months from the date of death. Even the press release issued by the

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			and sisters of the Individual. The term "dependant" in the explanation will deny the benefit where the parents, brothers or sisters are not dependant on the person for whose benefit the money is given on death of the deceased.	Government did not restrict the exemption to money received within 12 months. Therefore, the restriction of granting exemption only if the receipt is within 12 months should be omitted. Alternatively, atleast money paid in lump sum or in the form of annuity over many years (say till the child becomes graduate, etc.) by the employer after a period of 12 months should not be taxed. • Government has agreed to give compensation of Rs. 50,000 to the family members of the deceased. There is a possibility that the compensation from Government may be received after 12 months from the date of the death of deceased. Therefore, it is suggested that such compensation received from the Government should be exempt wholly irrespective of when it is received. An appropriate amendment should be made in section 10. • The word "dependant" in the definition of family should be omitted and any person who is related to the Individual as defined in s.56(2)(vii), irrespective of whether he is a dependant or not, should be inserted.

Retrospective amendments in various sections

The current government time and again has advocated that tax amendments will ordinarily be prospective and no retrospective amendments will be made which creates a fresh liability. It has adhered to this policy over the years. However, there has been a specific retrospective amendment made as well as a few amendments where the wordings used are in the nature of "clarifications" indirectly implying retrospectivity and effective from AY 2022-23 itself.

Retrospective amendments give rise to instability in law. Assessees expect a fair and transparent tax regime. Retrospective amendments deter the morale of the taxpayers especially when the assessee litigates for years and if he succeeds, he finds that the law is amended with retrospective effect. Even if the law requires to be amended to stop abusive tax practice or unintended consequence, it needs to be done promptly and in a reasonable time from the adverse decision being pronounced and effective prospectively.

In case of retrospective amendments several challenges are faced by the taxpayers. Some of the challenges are as under:

- Estimation of advance tax liability becomes incorrect.
- Interest under section 234C gets triggered due to shortfall in estimation of income
- Unwarranted litigation in earlier years on account of reassessments
- Overall sentiment of the assessee is impacted in case of retrospective amendment

The Finance Bill 2022 has proposed an amendment to clarify that the term "tax" u/s 40(a)(ii) shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax thereby now disallowing deduction of cess while computing profits and gains from business and profession. This amendment has been made retrospectively from AY 2005-06.

In addition to the above retrospective amendment, the Finance Bill 2022 has proposed inter-alia, the following amendments, from a retrospective date.

Sr. No.	Amendment/ announcement made	Relevant clause of the-Finance-Bill/ Section of Income-tax Act,1961	Provision and Issues	Rationale and Recommendations
12	**Retrospective Amendments**			
12A	Amendment to section 14A	Section 14A [Clause 9]	The disallowance will be attracted even if no exempt income is earned during the year **Issues:** • Disallowance under section 14A based on Rule 8D is onerous for the assessee incase where there is no exempt income earned or accrued • Further, with dividends becoming taxable from AY2021-22 onwards, the scope of 14A disallowance will be limited. This amendment is there-fore not warranted	**Recommendation:** • It is recommended that the rulings of the courts be respected, and the amendment should be dropped a enactment stage as it will give rise to several unintended consequences • In the alternate, it should be clarified that for the earlier years no reassessment or rectification can be done by the tax authorities.

Sr. No.	Amendment/ announcement made	Relevant clause of the-Finance-Bill/ Section of Income-tax Act,1961	Provision and Issues	Rationale and Recommendations
12B	**Amendments to Section 170** Taxing successor on business reorganisation	Section 170(2A) [Clause 54]	• Any proceedings which are made on the predecess or during "pendency of business re-organization" to be deemed to have been made on the successor **Issues:** The language of S.170(2A) and Explanatory Memorandum providing its rationale are seemingly not in sync. • Section 170(2A) does not validate the assessment orders passed/notices issued on the predecessor post the receipt of court order by the Commissioner basis "pendency" as defined. • In case of demerger the predecessor entity continues to be inexistence. E.g. company A having two businesses, one of consumer goods and another in Chemicals is wanting to demerge the chemical business to Company B. Hence even after the demerger, Company A will be in-existence having the consumer goods business. In such cases it would be illogical that the deeming fiction construing any assessment order made in name of the predecessor during "pendency" of "business re-organization" to be in name of the successor for the purpose of the Act as proposed by s.170(2A). • Further, in most cases the order of the HC/NCLT/AA will lay down the way the business will move inter-se between the predecessor entity and the success or entity and that ought to be respected and followed. There cannot be any deeming fiction in this respect.	**Rationale:** • A blanket deeming fiction would not be workable where the predecessor entity continues to exist and has income from business or profession. **Recommendation:** • Therefore, it is recommended to exclude from the scope of this amendment business reorganisations in the nature of demerger where the predecess or continues to exist post the business reorganisation. • Further, the provisions as approved in the order passed by the HC/NCLT/AA ought to be adhered to.

Sr. No.	Amendment/ announcement made	Relevant clause of the-Finance-Bill/ Section of Income-tax Act,1961	Provision and Issues	Rationale and Recommendations
12C	Section 79A	Section 79A [Clause 18]	• It is proposed to insert a new section 79A to disallow set off of losses or un absorbed depreciation from undisclosed income detected during the course of search or survey proceedings. • Unabsorbed depreciation is an allowance and not an expenditure.	**Recommendation**: • It is recommended that the amendment should only be prospective from FY 2022-23 (AY2023-24). • Further, it is recommended that un-absorbed depreciation should be permitted to be set-off against the undisclosed income.
12D	Section 144B on Faceless Assessments is omitted with retrospective effect from 1st April, 2021.	Subsection (9) of section 144B [Clause 42]	The sub-section (9) of section 144B provided that if the assessment is not made in accordance with procedures laid down in the section, then the assessments shall be considered as non-est. • The omission of this provision shall remove the safeguard provided to the taxpayer to protect their interest.	**Rationale:** The faceless assessment provisions were enabled with three-fold objective of efficiency, transparency and accountability. Having non-est provision was a welcome move and a well awaited change in the new faceless proceedings which protects the interest of taxpayers against arbitrary order. Omitting the provisions shall give unfettered powers and liberty to the authorities to pass assessment orders without adhering to procedures and guidelines. The omission of section shall be devastating to the very purpose of the bringing faceless assessment. **Recommendation:** 1. The provision should not be omitted. The sub-section is imperative to protect the in interest of taxpayer and also for bringing efficiency in faceless assessment procedures. 2. The provision should not be omitted from retrospective effect. It would be unfair for all the proceedings already in dispute

Sr. No.	Amendment/ announcement made	Relevant clause of the-Finance-Bill/ Section of Income-tax Act,1961	Provision and Issues	Rationale and Recommendations
12E	Interest on default to be paid in accordance with the order made by the Assessing Officer.	Section 201 [Clause 60]	• The scope of the amendment is not clear • The Explanatory Memorandum simply provides that there has been litigation with respect to the computation of interest and hence it is proposed to amend the law to pro-vide that interest is to be paid as computed in the order made by the assessing officer. • The Explanatory Memorandum does not set out the instances of dispute or litigation which is sought to be covered. • This amendment mandates that the interest be paid as computed by the assessing officer A provision of this nature is contrary to the rights of an assessee to contest the interest if it is in correctly computed.	**Recommendation**: • It is recommended that this provision be deleted. **ALTERNATIVELY** • A clear provision to be introduced with respect to the nature of litigation the government wants to settle.
12F	TDS to be deducted at the rate of one per cent of the amount of consideration paid or stamp duty value of property, whichever is higher.	Section 194IA [Clause 56]	• In case of transfer of an immovable property, TDS is to be deducted at the rate of 1% of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher. **Issues:** • Registration of a Conveyance Deed/Purchase agreement is permitted subsequently in the prescribed time from the date of Conveyance/Purchase Agreement. The buyer becomes aware of the stamp duty value only at the time of Registration of document. The buyer would have paid the entire consideration and deducted tax there from as per the existing provisions of section 194-IA before registration of the document. In such cases, the buyer will not be able to deduct further	**Rationale:** • Provisions of section 50C do not apply when the difference between agreement value and stamp duty value is less than 10% of the stamp duty value. In such case, the agreement value is deemed to be the full value of consideration and hence this is not consistent with the taxing provisions. • The amendment creates difficulties for tax payers, without achieving any additional benefit. • Under the present provisions of Section 194-IA and filing of SFT, the tax department obtains adequate information about there ale state transactions to enable taxation of the seller.

Sr. No.	Amendment/ announcement made	Relevant clause of the-Finance-Bill/ Section of Income-tax Act,1961	Provision and Issues	Rationale and Recommendations
			tax, if the stamp duty value is more than the agreement value. Similar is the issue when property is purchased during construction stage and progressive payments are made. Registration however happens at a later date.	**Recommendation:** • The proposed amendment be deleted in order to minimize the risk of tax litigation.
12G	Amendment to Sec 37	Explanation to section 37 [Clause 12]	Refer suggestions made at Point No 3	Refer suggestions made at Point No 3
12H	It is proposed to insert an explanation that application of income is to be considered only when it is actually paid from AY 2022-23.	Sections 11(7) & 10(23C) [Clauses 5 & 4]	Refer suggestions made at Point No 1-C	Refer suggestions made at Point No 1-C

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Date: 26th November, 2021

Ms. Nirmala Sitharaman
The Hon'ble Finance Minister
Government of India

Shri J. B. Mohapatra
The Chairman,
Central Board of Direct Taxes,
New Delhi

Respected Madam / Sir,

Subject : A representation in regard to the conditions set out in various orders of registration granted to Charitable institutions in response to applications preferred under section 12A(1)(ac) and the first proviso to section 10(23C) of the Income Tax Act 1961

Background

By the Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act 2020, all Charitable institutions are required to make applications for registration under section 12A(1)(ac) if they seek to claim an exemption under section 11, or in terms of the first proviso to sec 10(23C), if they seek to claim an exemption under section 10(23C)(iv), (v),(vi) or (via). These applications are required to be made by both newly formed Charitable institutions as well as those who were enjoying registration prior to the enactment referred to above.

The procedure for dealing with the said applications is contained in section 12AB and the second proviso to section 10(23C). The procedure dealing with the manner in which such registration is to be granted is contained in rule 17A or rule 2C, and the form prescribed is form 10A or 10AB. On receipt of the application, the Commissioner is empowered to grant/ reject the registration by an order which is to be issued in either form 10AC or 10AD.

The time for furnishing the applications above mentioned has for a variety of reasons been extended to 31st March 2022. The purpose of requiring all charitable institutions, whether new or existing ones was to allot a unique registration number (URN). This, we presume, was to

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ensure a proper identification of such institutions, and facilitate verifications of their affairs/ conduct should the need arise.

Issues arising out of the orders being passed by the Commissioner/s in response to the above applications

On account of the logistic and technical issues being faced by applicants, many Charitable institutions eligible for exemption and therefore requiring registration have not been able to file/furnish the said applications. The due date for filing of the applications has been graciously extended by you from 30th June 2021 to 31st March 2022.Those who have been able to file their applications have promptly received their registration certificates in either form 10AC or 10AD.

The provisions of the Income Tax Act 1961, and the rules prescribed there under authorise the Commissioner to make an enquiry if the institution is not already registered under the old provisions and either grant or refuse registration. In case of existing institutions which are registered earlier, the rules require grant of registration without any enquiry. Neither the statutory provisions nor the rules authorise the Commissioner to issue an order granting provisional registration or registration with conditions. Many existing Charitable institutions, have received a Certificate of Registration, which states that it is a Provisional Registration certificate, and imposing a number of conditions, many of them extremely onerous and virtually impossible to comply with. These charitable institutions are represented by our members, and as a public body, we felt it appropriate to make a representation to your honour to bring this to your notice and seek your help in resolving these issues.

The Certificate in Form 10AC states that it is a Provisional Registration Certificate. Neither the Act, nor the rules has this concept of Provisional Registration for institutions which were already registered earlier under sections 12 A or 12AA. Under rule 17A(7), the concept of provisional registration applies to new institutions, seeking approval for the first time, who are granted registration without any enquiry for a period of up to 3 years. The notified form states that it is an order of registration or provisional registration. For existing already registered institutions, rule 17A(5) refers to grant of registration, and not provisional registration. Such grant of provisional registration to institutions already registered earlier is an incorrect practice

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being followed, and needs to be corrected, both in cases where such certificate has already been issued, and for issue of certificate in future.

The conditions sought to be imposed are neither authorised by the statutory provisions or the rules prescribed thereunder. An illustrative list is as under

(a) As and when there is a move to amend or alter the objects/rules and regulations of the applicant, prior approval of the Commissioner of Income Tax shall be sought along with the draft of the amended deed and no such amendment shall be effected until and unless the approval is accorded.

(b) In the event of dissolution, surplus and assets shall be given to an organization, which has similar objects and no part of the same will go directly or indirectly to anybody specified in section 13(3) of the Income Tax Act, 1961.

(c) The Trust/ Society/ Non Profit Company shall maintain accounts regularly and shall get these accounts audited in accordance with the provisions of the section 12A(1)(b) of the Income Tax Act, 1961. Separate accounts in respect of each activity as specified in Trust Deed/ Memorandum of Association shall be maintained. A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on/ to be carried on and the target group(s) (intended beneficiaries) shall be duly displayed at the Registered/ Designated Office of the Organisation.

(d) No asset shall be transferred without the knowledge of Jurisdictional Commissioner of Income Tax to anyone, including to any Trust/ Society/ Non Profit Company etc.

(e) All the Public Money so received including for Corpus or any contribution shall be routed through a Bank Account whose number shall be communicated to Office of the Jurisdictional Commissioner of Income Tax.

Apart from the fact that these conditions are well beyond the mandate of the statutory provisions or the rules prescribed thereunder, they are extremely onerous making compliance virtually impossible.

1. The condition at (a) requires the Charitable institution to inform the Commissioner of any "move" to amend objects "rules/regulations". The amendment is subject to such prior approval being accorded.

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Firstly there is already in force section 12A(1)(ab) which requires the institution to apply for a fresh registration should there be an amendment to the objects which does not conform to the conditions of the original registration. With that provision existing, such a requirement requiring prior permission of the Commissioner is wholly unnecessary. Secondly, the manner of seeking such permission, and the timeframe for approval is not prescribed at all. The experience is that the administrative burden of the offices of the Commissioner is so large that they are unable to deal with their various responsibilities as of date. Entrusting an additional and wholly unnecessary burden is uncalled for. Secondly, the condition is to seek prior permission even for "rules/regulations". An institution may require to amend its rules and regulations for administrative convenience. For example, an institution may seek to empower its office bearer to sign cheques with differing limits. Seeking prior permission in regard to such changes will stifle the operations of the organisation and will create unnecessary hurdles in achieving its charitable objects. Thirdly, most states already have a separate trust legislation, which requires permission from the state authorities. This will meet the purpose of there being reasonable control over undesirable amendments to rules and regulations. We therefore submit that this condition should be totally deleted.

2. The condition at (b) is also uncalled for. The law already mandates through the provision of chapter XII-EB, that trusts who on dissolution do not transfer the assets to institutions with similar objects, would suffer tax on accreted income. This in itself is a strong enough disincentive to ensuring compliance. An additional condition is wholly unnecessary.

3. The third condition at (c) is in regard to the maintenance of accounts separately for each activity. The compliance thereof is virtually impossible. There may be multiple activities that an institution carries on which are complementary to each other. To require a trust to maintain separate accounts for each activity is far too onerous and does not serve any purpose whatsoever. It must be borne in mind that the exemption is in regard to application of income and not revenue earned. Further there is already in existence a provision in terms of section 11(4A), where, accounts in respect of a business incidental to the objectives of the trust, has to be maintained separately. No further condition is required. In fact if this condition is allowed to remain, then there will be many controversies because the term "activity" will be interpreted differently by different officials. There seems

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to be no logical reason for the said condition. The requirement to publish or display the activities carried on and the target groups is also unnecessary. The department is already armed with enough powers to verify as to whether the objects of the institution which is registered are being complied with in letter and spirit. Putting forth the burden of displaying the activities as well as the target groups would also serve no purpose whatsoever.

4. The condition at (d) requiring the intimation to the Commissioner of transfer of any asset is impossible to comply with. Any "asset" would include even the bank balance of the institution. In such a case, every expenditure or payment would result in the bank balance(asset) being transferred. If the Commissioner has to be informed of every payment, it would mean that a summary of all transactions would have to be intimated to the Commissioner on a daily basis. Assuming that this is to be restricted to investments, even then in the case of large trusts, these investments would also be undergoing a change very frequently. This imposes an unnecessary compliance burden on the trusts and serves no purpose whatsoever.

5. The condition at (e) requiring intimation of the bank account through which public money and corporate donations are routed is also unnecessary. As far as corpus is concerned, the new amendment by the Finance Act 2021 already mandates that the institution is required to invest the same separately in terms of investments maintained specifically for that purpose. Thus, that financial discipline is already provided for by the law. In large trusts having presence all over India, bank accounts may keep on being opened and money collected. In any event, the details of donations are already required to be submitted by a charitable institution in the context of section 80G. An additional administrative burden, without any corresponding benefit to the revenue, is also uncalled for.

We respectfully submit that the conditions sought to be imposed are totally misconceived, go beyond the scope of the law, and would create untold administrative burden on Charitable institutions, hampering their activities severely. We entirely appreciate the intent that institutions which enjoy a tax exemption should be compliant with the law and should pursue their charitable objectives in accordance with their charter. The revenue is already armed with enough powers to verify the accounts and record of erring institutions and bring them to book, as well as take deterrent measures.

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In the endeavour to carry out this objective, the conditions sought to be imposed in the orders granting registration under section 12A, will create possibility of harassment of genuine trusts and place hurdles in their activities.

In light of our above representation, we request your honour to do the following

(a) immediately instruct the officers issuing orders of registration under section 12A, to desist from prescribing the conditions of the nature illustrated above.

(b) In regard to the orders that have already been issued, an omnibus circular be issued to provide that the conditions included therein will not be effective

We hope that our representation will receive your kind consideration and the requisite action be taken at the earliest. We will be willing to meet your good self, or the concerned officials in order to clarify your concerns in this regard.

Thank you

Yours sincerely

for **Bombay Chartered accountants Society**

CA Abhay Mehta	**CA Deepak Shah**	**CA Anil sathe**
President	Chairman	Co-Chairman
BCAS	Taxation Committee	Taxation Committee

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Part II - Indirect Tax

Post Budget Suggestions and Recommendations in respect of proposed amendments in Goods and Service Tax Acts by Finance Bill 2022

Sr. No.	Section	Text of Proposed Amendment	Issues/ Concerns	Suggestions
1	Section 38 (1)	The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an autogenerated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, **within such time**, and subject to such conditions and restrictions as may be prescribed.	Existing GSTR-2B is generated immediately after the due date of furnishing of GSTR-1 i.e. on 12th of the following month. Thus, such statement for the month of July will be generated on 12th August and it has been clarified that the statement generated on 12th of August will contain data from 00:00 hours of 12th July to 23:59 hours of 11th. In other words, if the supplier issues invoice INV-01 in July and file his GSTR-1 for the month of July, anytime after the due date of filing of GSTR-1 (say between 12th August to 20th August) but file GSTR-3B for the month of July by due date i.e. 20th August by making payment of all tax dues for the month of July, still the said invoice INV-01 uploaded by such supplier in his GSTR-1 filed after 11th August will not be reflected in GSTR-2B of the recipient for the month of July and will be reflected in GSTR-2B of August. [At present such cases can be identified from GSTR-2A which is updated on a near real-time basis.] In such a case, taxpayers are apprehensive about taking ITC of the said invoice INV-01 in July as it's not appearing in GSTR-2B of July. This is causing a cash flow loss to the said receiver for in spite of the supplier has paid the taxes by the due date and having filed his GSTR-1 and GSTR-3B for the said	***Suggestion#1.1*** Even if invoices issued for a particular month are appearing in GSTR-2B of the subsequent months, the recipient may be allowed to take ITC at the earliest opportunity i.e. in the month in which such invoice is received on a provisional basis. For this purpose, the appropriate amendment is suggested in Section 41 as mentioned below at serial no. 3 at **suggestion#3.3**

Sr. No.	Section	Text of Proposed Amendment	Issues/ Concerns	Suggestions
			July month and the Government getting the taxes within due dates, the recipient has to defer its ITC to the next month, merely because GSTR-2B generated for the month of July did not contain the said invoice details. This may result in avoidable disputes and rifts between the supplier and receiver for compensation of the said cash flow loss and may also put the consultants involved in the compliance work under a lot of stress, making such compliance a highly risky affair. Since late fees are already prescribed for the delay in filing of returns/statements on the supplier, it's felt that such supplier or the recipient may not indirectly suffer in any other manner due to short delays in filing GSTR-1. In the above situation, there will be no loss to the revenue for the Government has received the taxes on time. There is also another concern that if ITC in respect of a particular supplier assessee for the month of July to September appears GSTR-2B of the receiver as eligible ITC and subsequently, under section 38 such supplier is classified as falling in circumstances listed in section 38(2), the said ITC would be regarded as restricted ITC in GSTR-2B of October, then whether the ITC already availed earlier as eligible ITC be regarded as irregular ITC inviting its reversal and payment of interest?	
2	Section 38(2)	(2) The auto-generated statement under sub-section (1) shall consist of— (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by	Section 38(2) proposes that ITC appearing in GSTR-2B (or such other form) will be divided into two parts – (i) eligible credit (ii) restricted credit. Having regard to the list of circumstances as mentioned in section 38(2) in which ITC will be classified as "restricted ITC", the following concerns are being raised.	***Suggestion#2.1*** Considering the fact that the recipient would not be entitled to Input Tax Credit unless the said invoice is uploaded by the supplier in his GSTR-1, the concept of 'restricted credit' is not required. All such cases

Sr. No.	Section	Text of Proposed Amendment	Issues/ Concerns	Suggestions
		the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,–– (i) by any registered person within such period of taking registration as may be prescribed; or (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or (vi) by such other class of persons as may be prescribed	**(a)** As the entire concept of restricted credit u/s 38 is a "system-driven, and system identified concept" (where supplier or receiver has no role to play but simply rely upon the findings given by the system) both the supplier and recipient should be provided with the opportunity to verify the correctness of the findings given by the system. In other words, invoices issued by a particular supplier may be included in the "restricted credit" category only after providing him a reasonable opportunity of being heard especially in cases covered in (ii) to (v) where the computations are involved. Examples: As regards (ii) what is meant by *"default in payment of tax by the supplier"* should be clarified. i.e. it should cover only those cases where the charge of tax is not in dispute (i.e. there is no correction/ amendment/appeal pending) and yet the payment has not been made by the supplier. As regards (iii) where liability as per GSTR-1 exceeds liability as per GSTR-3B by the prescribed limit, such supplier should be given the opportunity to clarify the reasons for differences, if any As regards (iii), (iv), and (v), as the criteria are computationally based, there should be clarity as to how the system will auto-identify such cases. (b) In case of new GST registrations, i.e. item (i) of the list, assuming prescribed period for which ITC will be restricted is of "2 months", if the recipient purchases from such newly registered person	where the invoice has been declared in GSTR-1 but tax has been short paid will be well within the knowledge of the Department and in such cases inquiries, follow ups and proceedings should be initiated against the supplier and not against the recipient. Even otherwise, section 41(2) requires the recipient to reverse the credit in cases where the tax has not been paid by the supplier along with interest **and hence a further new concept of 'restrictive credit' introduced by section 38(2) can be dispensed with.** ***Suggestion#2.2*** Even otherwise, under the proposed system an adequate mechanism is required to be made available whereby both the supplier and recipient are provided with the opportunity to verify the correctness of the communications made by the portal in terms of section 38(2) of the Act. ***Suggestion#2.3*** To increase transparency, the basis on which the system will identify the cases falling under (ii) to (v) be made clear to the public at large. For example: (1) In cases falling under section 38(2)(b)(iii) whether the system will compare monthly figures or cumulative figures of all months. (2) How the system will verify the case mentioned in section 38(2)(b)(iv) of the Act.

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			and pays entire consideration including GST immediately and such newly registered supplier files GSTR-1/ IFF and GSTR-3B in time and pays tax in respect of invoices issued in the first two months (thereby there being no loss to the Government), how far it is justifiable to deny the ITC in respect of such tax amount to the recipient merely on the ground that the supplier is new and have no established tax record.	
3	Section 41 (1)	41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.	The proposed section 41 seems to take away the concept of provisional credit (arising out of mismatch) especially since section 16(2)(aa) restricts availment of ITC only to the cases which are uploaded by the supplier in GSTR-1 communicated to recipient by the system in GSTR-2B. Hon'ble Apex Court in the case of *UNION OF INDIA vs BHARTI AIRTEL LTD AND OTHERS 2021-TIOL-251-SC-GST* has held that primary source for furnishing the return in a self-assessed manner is in the form of agreements, invoices/challans, receipts of the goods and services, and books of accounts which are maintained by the assessee manually/electronically. Auto-populated data available on the electronic portal is more in nature of a facilitator for confirmation but, non-operation of the same does not preclude one from appropriate compliance under the law. There is a concern that if ITC is availed by the recipient assessee based on the tax invoice and as per his books of accounts appears in the GSTR-2B not in the same month in which ITC is availed but in the subsequent month, the availment of such ITC in the earlier months will entail payment of interest.	***Suggestion#3.1*** The proposed amendment is making the process of availment of input tax credit very cumbersome, tedious, and difficult. The assessee has to make a lot of reconciliation between the following : (a) Input tax credit availed based on an accounting of invoices in the books of accounts (self-assessment credit) – This cannot be done away with as it's implicit in the accounting of expenditure to account for the tax portion separately. (b) Input tax credit communicated to the assessee under section 38 (2)(a) as eligible ITC. (c) Input tax credit communicated to the assessee under section 38 (2)(b) as restricted ITC. As laid down by Hon'ble Apex Court in UNION OF INDIA vs. BHARTI AIRTEL LTD AND OTHERS, the assessee may be permitted

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			For eg: if the recipient claims ITC for an invoice issued in the month of July in July but such invoice appears in GSTR-2B in the month of January either because (i) there was an error made by the supplier while uploading the said invoice or (ii) there is a delay in filing of GSTR-1/ GSTR-3B by the said supplier, the recipient assessee is liable to pay interest for the month of July to December (i.e. till such ITC appears in GSTR-2B of the recipient for Jan).	to avail in self- assessment manner based on agreements, invoices/ challans, receipts of the goods and services, and books of accounts which are maintained by the assessee manually/electronically and only if such credit does not appear in GSTR-2B or if the tax in respect of such credit is not paid by the supplier within a period of 3 years from the end of the financial year, such credit may be disallowed to the recipient assessee. The furnishing of statements under section 38 may continue and act for a recipient as a facilitator to take corrective action in respect of restricted credit. However, no action for reversal or recovery be taken until the expiry of a period of 3 years from the end of the financial year. ***Suggestion#3.2*** The time limit for making of amendments/rectification in terms of section 16(4), section 34, section 37(3), and section 39(9) etc be extended up to 3 years from the end of the financial year to which the invoice or debit notes or as the case may be the credit note pertain. ***Suggestion#3.3*** Alternatively, the following proviso may be added to section 41(1) of the Act *"Notwithstanding anything contained section 38 but subject to section 16(2) [except clause (aa) and (ba) of section 16(2)], the input tax credit availed by registered person on self-assessment basis shall not be denied to the said*

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				person so long as details of the invoice or debit note referred to in clause (aa) pf section 16 have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 any time after the date of such invoice or debit note and not necessarily in the month corresponding to the date of invoice or debit note or the month in which ITC is claimed by such recipient. *Provided further that in respect of cases falling under clause (ba) of section 16(2), credit shall be required to be reversed not earlier than the month in which such cases are communicated as per section 38(2)(b) of the Act.“*
4	Section 41(2)	(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed: Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.”.	As per the proposed amendment, if the recipient has availed ITC in respect of invoices where tax has not been paid by the supplier, then he is required to reverse the same along with applicable interest. However, once the supplier pays the same, he can re-avail the credit. It’s not clear as to how the recipient will come to know that the supplier has made the payment of such ITC so as to re-avail the said ITC. There is no provision for refund or re-adjustment of interest paid. You will appreciate that Government cannot enrich itself from the said interest when ITC itself is held as allowable.	1. An adequate mechanism may be provided whereby the recipient will be able to quantify the benefit of ITC that can be re-availed by him and no time restrictions may be placed on the same. 2. Such recipients shall also be allowed to re-adjust the amount of interest paid attributable to the input tax credit which becomes eligible for re-availment in terms of section 41(2)

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				3. In cases where the supplier has declared the liability in GSTR-1 and such ITC is appearing in GSTR-2B of the recipient assessee, such supplier shall be made primarily liable for payment of tax and only in cases where the recovery of liability is not possible from the supplier, the recipient may be made liable to pay tax and interest. Otherwise, this would lead to double jeopardy to the recipient who has already discharged payment of GST to the supplier and is once again asked to discharged GST to the Government along with interest. 4. The joint and several responsibilities of the suppliers and recipient is appropriate only in cases involving bogus or fraudulent tax credits and not in genuine cases where there is mere failure to pay tax by the supplier and the supply is genuine.
5	Section 49(12)	(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed."	There is a concern that section 49(12) is very widely worded and gives excessive delegated powers to prescribe conditions and restrictions to prohibit the utilization of input tax credit.	Import of Rule 86A may be brought in the main section itself and utilization of ITC be restricted only in the following cases. (a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 (i) issued by a registered person who has been found non-existent or not

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				to be conducting any business from any place for which registration has been obtained; or (ii) without receipt of goods or services or both (b) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained