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19th February, 2016

To,
Hon'ble Shr I Arun Jaitley
Minister of Finance
Government of India
North Block,
New Delhi – 110001.

Dear Sir,

Sub: Representation in respect of Income Computation and Disclosure Standards [ICDS]

We enclose herewith our representation and suggestions in respect of implementation of ICDS, for your consideration.

We sincerely hope that our representation would receive favourable consideration.

Thanking you,

We remain,

Yours truly,

For Bombay Chartered Accountants' Society

Raman Jokhakar
President

Sanjeev R. Pandit
Chairman
Taxation Committee

Ameet Patel
Co-Chairman
Taxation Committee

Copy to:

1. Shri Jayant Sinha, Minister of State for Finance.
2. Dr. Hasmukh Adhia, Revenue Secretary.
3. Shri Atulesh Jindal, Chairman, CBDT.
4. Shri Kirit Somaiya, Member of Parliament.

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Representation regarding Income Computation and Disclosure Standards

The present Government took office promising to end 'tax terrorism' and providing an environment fostering ease of doing business.

The Income Computation and Disclosure Standards (ICDS) will certainly not make it easy for doing business in India. The Government should take into account valid concerns, genuine fears of the taxpaying community and far-reaching effects of the ICDS before implementing the ICDS.

A large number of provisions contained in the ICDS accelerate the taxation either by taxing income before it is recorded in the books of account or by not allowing losses recorded in books of account as per well recognised commercial practices and the Accounting Standards prescribed by the Institute of Chartered Accountants of India or those notified by the Government for companies.

This will only widen the difference between the accounting profits and taxable income and increase timing differences resulting insubstantial increase in cost of compliance without any substantial benefit on an overall basis.

Also, the haste to collect revenue by taxing income before it is commercially recognised as income, creates dissatisfaction and mistrust in the business community.

Timing differences resulting from taxing income before it is recognised under the applicable accounting standards or under commercial practices and similarly postponing deductibility of losses, may result in the companies becoming liable to pay Minimum Alternate Tax (MAT) in the year when income which is already taxed due to provisions of ICDS is recognised in the accounts or losses are allowed in a year subsequent to their recording in the accounts. ***This will result in double taxation of the same income. This certainly is not fair and just. Also, this neither was the intention of the ICDS nor was this contemplated or intended while introducing MAT.***

Many provisions contained in ICDS go against various judicial pronouncements by courts which interpret and declare the law of the land as it stands. ***This is bound to create uncertainty and open floodgates for litigation, particularly where provisions in ICDS relate to timing of accrual and not merely deviation from an accounting practice.***

The ICDS prescribe what should be allowed or disallowed while computing the total income. This is the function of the legislature to be done by amending the Act. ***The ICDS are seen as opening a door for bringing substantial changes to provisions relating to computation of income without requiring amendments to the Act.***

Many of the provisions of the ICDS, particularly when considered cumulatively, will require substantial additional workings from year to year and maintenance additional records. Small businesses and start-ups will find it difficult to comply with the ICDS. ***The ICDS would place an enormous compliance burden on all businesses, which are already suffering from excessive compliance requirements.***

To summarise:

- (a) The ICDS are not a step towards Government's promise to bring about ease of doing business in India;***
- (b) We believe that implementation of the ICDS will increase litigation manifold without any significant increase in the revenue for the Government except possibly in the year of introduction of the ICDS;***
- (c) The ICDS in certain cases would lead to double taxation; and***
- (d) The ICDS would place an enormous compliance burden on all businesses.***

Considering this we suggest:

- (a) The Government should seriously and with an open mind consider the advisability of implementing the ICDS.***
- (b) Pending this, implementation of the ICDS should be deferred. Recommendations of the Committee chaired by Justice R.V. Easwar are to the same effect.***

(c) If at all ICDS are to be implemented, these should be made applicable only to large companies who are required to prepare their accounts applying Ind-AS. This will result in obviating the difficulty in adopting financial statements prepared under Ind-AS as the base for taxation. Also, these companies have the wherewithal to implement the ICDS.
