

POST BUDGET MEMORANDUM 2023-24



Bombay Chartered Accountants' Society

7, Jolly Bhavan No. 2, Ground Floor, New Marine Lines, Mumbai – 400 020.

T : +91 22 61377600 | E : bca@bcasonline.org | W : www.bcasonline.org

E-Journal : www.bcajonline.org | E-Learning : <https://bcasonline.courseplay.co/>

Index

Sr. No.	Topic	Page No.
1	Representation on the Provisions related to Charitable / Religious Trusts	1
2	Representation on other sections	10



Direct Tax

REPRESENTATION ON THE PROVISIONS RELATED TO CHARITABLE / RELIGIOUS TRUSTS

Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/Relevant clause of Finance bill	Provision and Issues	Recommendations
1.	<ul style="list-style-type: none"> Donations to other trusts 	<ul style="list-style-type: none"> Explanation 4 to Section 11 / Clause 7 	<p>Provision</p> <ul style="list-style-type: none"> Donation to other registered or approved trusts is proposed to be allowed as an application for charitable or religious purposes only to the extent of 85% of such donations. <p>Issues</p> <ul style="list-style-type: none"> The income to the extent of balance 15% of such donations will not be eligible for exemption since it will neither be considered to have been applied for charitable or religious purposes nor will it be possible for the trust to accumulate it or set it apart for application in future (as allowed subject to maximum of 15% of the total income in accordance with the provisions of section 11(1)(a)). The illustration for understanding this issue is provided below – 	<p>Recommendations</p> <ul style="list-style-type: none"> Instead of making an amendment which is applicable while computing the income of the donor trust, the amendment could have been made applying it to the computation of the income of the donee trust which may achieve the same objective but without creating such an unintended consequence. The donee trust should be allowed to claim exemption with respect to the donations received from the other trust only if it has been applied for charitable or religious purposes. The exemption to the extent of 15% of such donations as is available at present if it is accumulated or set apart may be denied. The change in the impact due to this recommended amendment will be as follows –



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/Relevant clause of Finance bill	Provision and Issues			Recommendations		
			Particulars	Amount (₹)	Amount (₹)	Particulars	Trust A	Trust B
			Income from property held under trust		10,00,000	Income from property held under trust (other than donations from other trust)	10,00,000	8,00,000
			Less: Application of Income					
			Donation given to the other trust registered u/s. 12AB	10,00,000		Donations from Trust A	-	5,00,000
			85% of the donation considered as application		(8,50,000)	Less: Application of Income		
			Less: Income accumulated or set apart for application (subject to maximum 15% of income)#		-	Income spent for the objects	(1,00,000)	(2,00,000)
			Balance Income after Exemption u/s. 11		1,50,000	Donation given to Trust B	(5,00,000)	-
						Less: Income accumulated or set apart for application (subject to maximum 15% of income) #	(1,50,000)	(1,20,000)
						Balance Income after Exemption u/s. 11	2,50,000	9,80,000
			# Since the whole of the income has been spent in the form of donations to the other trust, there is no accumulation or setting apart of the income.			It can be seen that benefit of accumulating 15% of income has been claimed only at the first stage i.e. by Trust A and not at the subsequent stage when the income has been donated to the other trust.		



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/Relevant clause of Finance bill	Provision and Issues	Recommendations
				<p>Rationale</p> <ul style="list-style-type: none"> The objective of the amendment was to discourage the practice of forming multiple trusts and accumulating 15% at each stage. The same objective can be achieved by making the amendment as proposed. The exemption would be denied to the trust receiving the donations from the other trusts if it has accumulated or set apart whether up to 15% of such donations or more.
2.	<ul style="list-style-type: none"> Time limit for submission of Form 9A / 10 	<ul style="list-style-type: none"> Explanation 1 to Section 11(1) and Section 11(2) / Clause 7 	<p>Provision</p> <ul style="list-style-type: none"> The time limit for submission of Form 9A and Form 10 is proposed to be reduced and it will now be required to be submitted at least two months prior to the due date specified under section 139(1) for furnishing the return of income. <p>Issues</p> <ul style="list-style-type: none"> The need for exercising the option as provided under clause (2) of the Explanation to section 11(1) or for accumulating the income in accordance with the provisions of section 11(2) can 	<p>Recommendations</p> <ul style="list-style-type: none"> The time limit for furnishing Form 9A / 10 should be kept as the same as the time limit applicable for furnishing the audit report. <p>Rationale</p> <ul style="list-style-type: none"> There would not be any difficulty for the auditor to report the details of Form 9A / 10 in the audit report if the time limit for submission of both is same.



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/Relevant clause of Finance bill	Provision and Issues	Recommendations
			<p>be ascertained only upon the completion of the audit and determination of the total income thereafter.</p> <ul style="list-style-type: none"> The trusts are required to submit their audit report one month prior to the due date specified under section 139(1) for furnishing the return of income. If the trusts are required to submit Form 9A / 10 two months prior to the due date, then it will be resulting in hardship. 	
3.	<ul style="list-style-type: none"> Effective year from which the exemption can be claimed in the case of new trust which has not yet commenced its activities 	<ul style="list-style-type: none"> Section 12A(1)(ac) (iv) / Clause 8 	<p>Provision</p> <ul style="list-style-type: none"> Though the provisions have been amended to extend the benefit of the exemption from the first year of its incorporation to the new trust which has already commenced its activities, if such trust has not yet commenced its activities then it is still required to make an application for its registration at least one month prior to the commencement of the previous year relevant to the assessment year from which the registration is sought. 	<p>Recommendations</p> <ul style="list-style-type: none"> The time limit and the year from which the registration becomes effective for the purpose of obtaining the exemption should be kept same for the new trust which is making its application for registration for the first time irrespective of whether it has commenced its activities or not. The amended provision providing for the regular registration instead of provisional registration may be made applicable only to the trust which has commenced its activities.



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/Relevant clause of Finance bill	Provision and Issues	Recommendations
			<p>Issues</p> <ul style="list-style-type: none"> The new trust might earn income from the property which is held under the trust which is otherwise eligible for the exemption irrespective of whether it has commenced its activities or not e.g. corpus donations. In such case, the trust is not able to get the exemption for its first year because it cannot satisfy the condition of making an application for its registration at least one month prior to the concerned year from which the registration is sought. 	
4	<ul style="list-style-type: none"> Applicability of exit tax under section 115TD upon failure to make the application for registration in certain cases 	<ul style="list-style-type: none"> Section 115TD / Clause 7 	<p>Provision</p> <ul style="list-style-type: none"> Upon failure of the trust to make an application in accordance with the provisions of section 10(23C) or 12A within the specified time it is proposed that such trust shall be deemed to have been converted into any form not eligible for registration. Accordingly, such trust shall be liable to pay tax on its accreted income within fourteen days from the end of the concerned previous year in which such failure has occurred. 	<p>Recommendations</p> <ul style="list-style-type: none"> The period of at least six months from the expiry of the time period for making the application should be allowed to the trust and the provisions of Section 115TD should not be made applicable if the trust has made the required application within such extended time period. Further, the provisions of Section 115TD should be made applicable thereafter only in the following case –



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/Relevant clause of Finance bill	Provision and Issues	Recommendations
			<p>Issues</p> <ul style="list-style-type: none"> • The proposed amendment does not provide for any kind of relaxation and it triggers the taxability even in a case where there is a reasonable cause for such failure to apply for the registration or where the period of delay very short and for justifiable reasons. • Therefore, it may result into great hardship if such trust is required to pay the tax on its accreted income being the difference between the fair market value of all the assets as reduced by the liabilities. 	<ul style="list-style-type: none"> o The Principal Commissioner or Commissioner may issue a notice to the concerned trust requiring it to show cause as to why the provisions of Section 115TD should not be invoked where the failure as proposed has occurred. o In response to the said notice, the trust should be allowed to make the necessary application for its registration which it had failed to do earlier within a period of one month from the date of receipt of the notice. o The provisions of Section 115TD should be made applicable only if the trust has failed to make the application for registration even in response to such notice issued to it. o Further, this provision should be made applicable only from 1st April, 2024 and not from 1st April, 2023. Else, it will expose the trust which has already failed to make the application for registration to the additional tax on its accreted income. If required such trust may be provided time till 30th September,



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/Relevant clause of Finance bill	Provision and Issues	Recommendations
				2023 to make the application for its registration which it had failed to do earlier.
5.	Omission of provisions related to roll back of exemption	Provisos to Section 12A(2) / Clause 8	<p>Provision</p> <ul style="list-style-type: none"> It is proposed to omit the provisions under which the exemption under section 11 or 12 was extended even to the years prior to the effective year of registration of the trust was available. <p>Issues</p> <ul style="list-style-type: none"> There can be genuine cases where the trust has not sought registration through oversight/ misunderstanding and intends to regularise such default by making an application for registration. In such case, it will always be apprehended that its assessment for the past years would be reopened if it comes forward voluntarily. <p>Therefore, the proposed omission of the provisions under which the exemption was extended for the past years although the trust was not registered upon fulfilment of certain conditions will discourage such non-compliant trust to come forward for registration.</p>	<p>Recommendations</p> <ul style="list-style-type: none"> These provisions should not be omitted and should be kept in force. <p>Rationale</p> <ul style="list-style-type: none"> In the memorandum, it has been mentioned that these provisions have become redundant after the amendment of Section 12A by the Taxation and Other Laws (Relaxion and Amendment of Certain Provisions) Act, 2020. However, with due respect, it is submitted these provisions have not become redundant at all. <p>Even if a view that these provisions have become redundant is accepted, then the other provisions should be modified suitably to make these provisions workable so that the benefit of the exemption is being extended to the years prior to the effective year of the registration subject to the fulfilment of applicable conditions.</p>



REPRESENTATION ON OTHER SECTIONS

Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
6.	Surcharge	Clause 2	<p>Provision</p> <p>Highest surcharge is reduced from 37% to 25% in the new tax regime which is a welcome step.</p> <p>The surcharge rate is reduced because as per the finance minister this is amongst the highest in the world.</p> <p>Issue</p> <p>However, the same reason and logic is not applied while retaining the surcharge of 37% in the old tax regime.</p>	<p>Recommendation</p> <p>It is suggested that the highest surcharge rate of 37% should be reduced to 25% in the old tax regime, as well.</p>
7.	Rebate under Section 87A	Section 87A [clause 43]	<p>Provision</p> <p>As per the proposed amendment, in case of an individual assessee resident in India whose total income taxable under section 115BAC does not exceed Rs 7,00,000, a rebate of an amount equal to 100% of income tax or Rs 25,000, whichever is lower, shall be available from such income tax on his total income. Effectively in such cases tax liability will be NIL.</p> <p>Under the old regime, there is no change in rebate available under section 87A.</p> <p>As in the past there is no provision for marginal relief under the old regime.</p>	<p>Recommendation</p> <ul style="list-style-type: none">• It is suggested that the increased rebate limit be made available to an individual assessee opting for the old regime as well.• It is also suggested that a provision providing for marginal relief be incorporated in the case of a taxpayer paying tax under the old regime.



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
8.	Sum received under life insurance policy	Clause 5(c) - Section 2(24), Sixth and seventh proviso to Section 10(10D) and 56 [clause 5(c)]	<p>Provision</p> <p>It is proposed that no exemption shall be available in respect of life insurance policies (excluding ULIP) issued on or after 01-04-2023 if the premium payable or aggregate premium payable for any year during the term of policy exceeds Rs. 5 lakhs.</p> <p>Further, it is provided that such amount received under life insurance policies (other than ULIPs) shall be taxable under the head income from other sources.</p> <p>If any deduction has been claimed in respect of premium under any other provision of the Act, it shall not be included in the aggregate amount of premium to be deducted while computing income on receipt of money on maturity.</p> <p>Issues</p> <p>Tax is payable on the sum received on maturity less sum paid towards the premium over the life of the policy. However, any sum claimed as deduction would not be allowed as deduction.</p>	<p>Recommendation</p> <p>The benefit of indexation should be provided and the sum received on maturity of life insurance policy should be taxed under the head capital gain and not income from other sources, as in the case of ULIPS.</p>



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
			<p>This will create practical difficulty in keeping record for calculating the income since a) the assessee might have claimed deduction u/s. 80-C only for few years of policy period. b) total yearly premium may not have been claimed as deduction.</p> <p>If the payment on maturity of life insurance policy is received in installment, there would be difficulty in calculating the taxable income.</p> <p>Income would be taxed as other income. The assessee deposits the premium over many years and the sum received on maturity after a long period of 15-20 years, difference between the money received and premium paid is taxed without giving any benefit of inflation.</p>	
9.	Deduction for payment made to MSME to be allowed on payment basis	Section 43B[Clause 13]	<p>Provision</p> <ul style="list-style-type: none"> Newly inserted clause (h) provides that any sum payable by the assessee to a Micro and small enterprise beyond the time limit specified in section 15 of MSME Act 2006 shall be allowed as a deduction only in the year in which actual payment is made. Proviso to section 43B allowing deduction of amount if paid before the due date of filing of the return of income shall not apply to this clause. 	<p>Recommendation</p> <ul style="list-style-type: none"> The section is introduced to promote timely payments to Micro and small enterprises. Micro and Small enterprises, who do not pay other Micro and small enterprises, should not suffer disallowance.



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
			<p>Issues</p> <ul style="list-style-type: none"> The assessee will not be eligible for deduction of any amount paid to Micro and Small Enterprises beyond the time limit specified in section 15 of MSMED Act 2006 even though the payment is made before the due date of filing of the return of income. This will discourage the assesseees to execute transactions with Micro and small enterprises. 	<p>Recommendation</p> <ul style="list-style-type: none"> The proviso to Section 43B should apply to newly inserted clause (h), to permit deduction, if payment is made before the due date of filing of the return of income. This provision should not apply where payer is Micro and Small enterprises. The amended provisions be made applicable only where payments are to be made to entities 'registered' under MSMED Act.
10.	Capital gain on Market Linked Debenture	Section 50AA and omission of section 193 [Clause 24]	<p>Provision</p> <p>Newly inserted section 50AA provides that capital gain on transfer or redemption of market linked debenture where the returns are linked to the underlying securities or indices would be treated as a short term capital gain. This amendment is applicable from the assessment year 2024-25.</p> <p>Issues</p> <p>Prior to 31/01/23, investors have invested money in the market linked debenture with the understanding that the LTCG on such debenture would be taxed at 10%.</p>	<p>Recommendation</p> <p>The proposed amendment should apply to market linked debentures issued on or after 01/02/2023.</p>



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
			Change in the tax rate with retrospective effect will have adverse impact. Therefore, amendment should apply only to the Market Linked Debentures issued after 01/02/23.	
11.	Cost of new asset exceeding Rs. Ten crore shall not be taken into account for computing exemption under section 54	Section 54 [Clause 25]	<p>Provision</p> <ul style="list-style-type: none"> • Long Term capital gains arising on transfer of a residential house are exempt from tax (subject to fulfillment of certain conditions), if gains are invested in acquiring a new residential house. • As per provisions of Section 54(1)(i), if the amount of capital gains is more than the cost of new house, amount of capital gains equal to the cost of the new house will be treated as exempt. • Cost of new residential house exceeding rupees ten crore shall be ignored for the purpose of computing the exemption. <p>Issues</p> <ul style="list-style-type: none"> • As per the amendment, since the cost of new residential house exceeding rupees ten crore shall be ignored, the maximum exemption available to 	<p>Recommendation</p> <ul style="list-style-type: none"> • If the new house is transferred within 3 years from the date of its purchase or construction, while computing capital gains on sale of new house, its cost should be reduced by the amount of claimed exempt earlier, to avoid double taxation. <p>Recommendation</p> <p>To avoid double taxation, it should be provided in Section 54(1)(i) that if the new residential house is transferred within a period of 3 years from the date of its purchase or construction, cost of said new house to the extent it exceeds ten crore be treated as its cost while computing capital gains arising on its transfer.</p>



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
			<p>the assessee will be rupees ten crore even though capital gains exceeding ten crore are invested in purchase of a new house costing more than ten crore.</p> <ul style="list-style-type: none"> • When exemption is claimed under section 54(1)(i) of Rupees ten crore and subsequently, the new residential house is transferred within a period of 3 years from the date of its purchase or construction, cost of the said new house will be treated as NIL while computing capital gains arising on its transfer. • Since cost of new house is restricted to rupees ten crore, treating cost of the new house as NIL, will result in double taxation. 	
12.	Amendment to the definitions of cost of acquisition and cost of improvement	Section 55 [Clause 31]	<p>Provision</p> <p>Under the existing section 55, the cost of acquisition in relation to a capital asset, being goodwill of a business or profession, or other specified assets where these assets are not acquired by the assessee by way of purchase from a previous owner but are otherwise acquired, and their cost of improvement are taken as nil.</p>	<p>Recommendation</p> <p>The Supreme Court in B C Srinivasa Setty's case propounded the principle that an asset which is capable of acquisition at a cost would be included within the provisions pertaining to the head "Capital gains" as opposed to assets in the acquisition of which no cost at all can be conceived.</p>



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
			<p>The present proposal seeks to include 'any other intangible asset' and 'any other right' as assets that are to be treated similar to goodwill, etc for which the cost of acquisition and cost of improvement will be taken as nil.</p> <p>Issues</p> <p>The current proposal is extremely wide in scope and could bring capital assets within its ambit which may not be intended.</p> <p>Costs may be incurred with respect to intangible assets that are self-generated and are not purchased. Some examples are (a) a copyright in a cinematographic film or sound recording where the producer incurs costs in producing the film or sound recording; (b) product development expenses (know-how and designs) (c) patent developed by incurring research costs. Such actual expenditure incurred, which is capital in nature, may not be available as a deduction as revenue expense. Further, in case of an assessee who is not engaged in business or profession may not be able to get a deduction for such expenditure under any other provision of the Act.</p>	<p>Section 55(2)(a) was originally introduced providing for the cost of acquisition of goodwill to be taken as nil in order to nullify the SC ruling and to enable computation of capital gains in respect of transfer of goodwill. Subsequent amendments introduced other classes of assets with the same reasoning.</p> <p>A literal reading of the proposed amendment will take the cost of such assets as nil ignoring the costs incurred for bringing the asset into existence or for their improvement.</p> <p>Recommendation</p> <p>The proposed amendment is to be deleted.</p> <p>Alternatively, the amendment should be restricted only to cases where the assessee has not determined any cost of acquisition or improvement.</p>



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
13.	Share monies received at premium	Section 56(2)(viib) [clause 32]	<p>Provision</p> <p>Section 56(2)(viib) provides that where a company, not being a company in which the public are substantially interested, receives from a resident, any consideration for issue of shares that exceeds the fair market value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'. The provision is presently not applicable to consideration received from non-residents for issue of shares.</p> <p>In order to widen the scope of this provision, it is now proposed that this clause be made applicable to receipt of any consideration for issue of shares from any person irrespective of residency status.</p> <p>Issue</p> <p>There is a dichotomy between the valuation rules pertaining to issuance of shares under the FEMA Rules and the Income Tax Rules. The FEMA valuation</p>	<p>Recommendation</p> <p>To avoid the gap between the valuation norms prescribed under FEMA and Income Tax for issuance of shares to non-residents, it is recommended that a provision on the lines of safe harbour rules in transfer pricing should be introduced, Alternatively specific rules of valuation for issue of shares to non-residents be notified.</p>



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
			<p>rules provide for the minimum price for bringing in funds from outside India, and that may not be the same as the fair value under the Income Tax Act. Thus, if the valuation under FEMA rules exceeds the FMV as per Income Tax rules, there are likely to be red flags.</p>	
14.	Reducing time limit to furnish Transfer Pricing ('TP') documentation	Section 92D(3) [Clause 46]	<p>Provision</p> <p>With a view to allow Transfer Pricing Officers sufficient time to examine TP documentation and complete TP assessments within the prescribed time limit, it is proposed to reduce the time period of 30 days to submit TP documentation to 10 days under section 92D(3). An extension may be sought by the assessee's of not more than 10 days to submit the TP documentation.</p> <p>Issue</p> <p>The period of 10 days may be too short for assessee's to share the TP documentation as the period may include weekends, public holidays, etc.</p> <p>While a transfer pricing study would necessarily form the basis of a transfer pricing audit, the study may have to be updated as financial data of comparables may not have been available earlier.</p>	<p>Recommendation</p> <p>It is recommended that the period should be extended from 10 days to 15 days and an assessee be permitted to seek an extension of another 15 days. This would also allow the authorities sufficient time to examine the TP documentation and complete assessments within the prescribed time limit.</p>



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
15	Increase in rate of TCS from remittance made for overseas tour package and any other case	Section 206C(1G) [Clause 90]	<p>Provision</p> <ul style="list-style-type: none"> TCS rate on foreign remittance under Liberalised Remittance Scheme is increased to 20% for remittance other than education and medical treatment <p>Issues</p> <ul style="list-style-type: none"> This leads to substantial increase in the total amount of remittance. This leads to a cash flow issue, especially for assesseees who do not have taxable income since the amount of TCS will be refunded only after the filing and processing of the return of income. This adversely affects the salaried employee, since employer deducts tax on entire salary income and the employee normally does not have substantial other income to absorb the TCS. This leads to cash flow issue 	<p>Rationale</p> <ul style="list-style-type: none"> The amendment creates difficulties for taxpayers, without achieving any additional benefit. Under the present provisions of Section 206(1G), the tax department obtains adequate information about the remitter and the transaction. <p>Recommendation</p> <ul style="list-style-type: none"> The rate of TCS be continued at 5%. Threshold of Rs. 7 lakh should be made applicable to all remittances. TCS should not be charged on remittance made for investment, since the details of foreign assets are provided by the taxpayer in the return form and these details can be verified by the tax officer



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
16.	Non-granting of additional refund under section 244A(1A) where refund is withheld under section 245(2)	Section 244A(1A) [Clause 93]	<p>Provision/ Issue</p> <p>It is also proposed to exclude the period for which refund is withheld under section 245(2), while computing and granting additional interest under section 244(1A). This is very unjust and unfair to assesseees as the amount withheld continues to be available with the Department.</p>	<p>Recommendation</p> <p>It is recommended that additional interest under section 244A(1A) ought to continue to be granted till the period an order for withholding of refund is passed under section 245. Further, the refund withheld should be deemed to be an adjustment and credit should be allowed to the assessee in the Assessment Year against which the refund is withheld from the date the order for withholding of refund is passed. This would allow an assessee to claim credit of such amount along with interest post completion of assessment.</p> <p>In fact, in a scenario where the refund withheld is more than the demand raised pursuant to assessment or re-assessment, it is recommended that additional interest under section 244(1A) ought to be granted from the period the order was passed for withholding of refund till grant of excess refund withheld so as to discourage frivolous withholding of refunds.</p>



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
17.	Provisions relating to set-off and withholding of refunds	Section 245(2)[Clauses 92 and 94]	<p>Provision/Issue</p> <p>As per the explanatory memorandum, it is proposed to integrate the provisions of section 241A dealing with withholding of refunds with section 245 relating to set-off of refunds as there is an overlap between the two provisions.</p> <p>Presently, only a refund arising in an intimation may be withheld if a notice for assessment for that year has been issued, till the assessment for that year is completed, and that too subject to certain conditions. Under the present section 245 any refund due to an assessee may be set- off against any sum payable by the assessee under the Act, after intimating the assessee of the proposed action. Thus, both the sections operate in different areas.</p> <p>The amendment has expanded the power to withhold refunds arising under any provision of the Act, e.g. on giving effect to appellate orders, rectification etc. against any pending assessment or reassessment proceeding, if granting of refund is likely to adversely affect the revenue, till completion of such assessment or reassessment proceedings subject to approval from PCIT or CIT. Further, no opportunity of being heard is provided to the assessee.</p>	<p>Recommendation</p> <ul style="list-style-type: none"> It is recommended that the scope of amended section 245 be restricted to what is currently under law (under section 241A) and the power to withhold refunds should only apply to refunds arising on intimation under section 143(1), where the assessment is pending, and that too only upto the date of assessment. This is in line with the current provisions of section 241A. The intention from the memorandum to integrate the two provisions since they overlap, is misplaced and the proposed amendment be deleted. Also, in case the proposed amendment is not deleted, it is recommended that section 245 be amended to provide an “opportunity of being heard” to an assessee before any order for adjustment or withholding of refund is passed by the Assessing Officer. The Assessing Officer should also be required to pass a speaking order before withholding of refund providing the reasons as to why granting of refund shall adversely affect the revenue. Opportunity of being heard is fundamental for “natural justice” to the assesseees.



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
			<p>It is pertinent to note that a similar provision (section 241) existed in the past which was omitted vide Finance Act, 2001 as the provisions allowing withholding of refund were being misused and honest taxpayers had to wait for years to receive refunds which are due to them.</p>	<ul style="list-style-type: none">• Further, it should also be provided that any adjustment of refunds withheld should be restricted to 20% of the outstanding demand in line with office memorandum issued by CBDT in F.No. 404/72/93-ITCC dated 31 July 2017. The Hon'ble Delhi High Court in a writ in the case of Skyline Engineering Contracts(India) Private Limited [TS-793-HC-2021(DEL)] has directed the revenue to refund amount adjusted in excess of 20% of total disputed tax demand.• Further, if the amendment is continued, assesseees should be allowed to challenge the withholding of refund in an appeal before the Income-tax Appellate Tribunal, and section 253 ought also to be amended by including any order passed under section 245 of the Act.



Sr. No.	Proposed Amendment	Section of Income-tax Act,1961/ Relevant clause of the Finance Bill	Provision and Issues	Recommendations
18.	Cross Objections to filed by Assessing Officer	Section 253 [clause 102]	<p>Provision / Issue</p> <p>Under the existing provisions, a memorandum of cross – objections can be filed by the respondent of an appeal when an appeal is filed against an order of Commissioner of Income tax (Appeals).</p> <p>The proposed amendment expands the scope, such that, in case an appeal is filed against any order a cross objection can be filed by the respondent.</p> <p>Issue</p> <p>This will empower an assessing officer to file a cross objection against the order of an officer of a higher rank creating an irrational situation. For E,g If an assessee files an appeal against an order under section 263, an assessing officer will be entitled to file a cross objection.</p>	<p>Recommendation</p> <p>This amendment should be deleted. Alternatively the right to file an objection should be restricted only to those cases where the right to file an appeal is vested in the assessing officer.</p>