BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

Pre - Budget Memorandum

2024-2025

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BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

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Vice-President	Anand Bathiya
Hon. Joint Secretaries	Zubin Billimoria
	Mandar Telang
Treasurer	Kinjal Shah
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	Jagdish Punjabi	Saroj Maniar
	Sharad Sheth	Sonalee Godbole

Date: - June 17, 2024

Smt. Nirmala Sitharaman
The Finance Minister of India,
Ministry of Finance,
Government of India
North Block,
New Delhi – 110001.

Subject: Submission of Pre-Budget Memorandum for Finance Act, 2024

Respected Madam,

On behalf of the Bombay Chartered Accountants' Society (BCAS), we are pleased to submit the Pre-Budget Memorandum for your consideration during the formulation of the Finance Act 2024. Our memorandum highlights key concerns affecting the common man and offers recommendations to address them.

We recommend reducing the maximum tax rate for individuals to 30% to provide relief to high-income earners. Reinstating the exemption for medical reimbursements up to Rs. 50,000 per annum will help salaried employees cover small and outpatient medical expenses. Increasing the threshold for advance tax payment from Rs. 10,000 to Rs. 1,00,000 will reduce the burden on taxpayers. Additionally, reinstating the 150% weighted deduction for in-house R&D expenditure will promote innovation and technological advancement. Raising the exemption limit under Section 54EC from Rs. 50 lakhs to Rs. 2 crores will provide adequate relief in line with inflation.

These recommendations aim to simplify tax compliance, reduce the financial burden on individuals, and promote overall economic growth. We hope they will be favourably considered.

Thank you for your attention.

Yours sincerely,

CA Chirag Doshi	CA Deepak Shah	CA Anil Sathe
President	Chairman	Co-Chairman
	Taxation Committee of the BCAS	

Enclosure: Pre-Budget Memorandum for Finance Act, 2024For Bombay Chartered Accountants' Society

Representation – Direct Taxation

#	Existing provision under the Income-tax Act, 1961	Difficulties / Obstacles / Hurdles faced	Suggestions
1	Tax rates for non-corporate tax payers	In recent years, tax rates for corporates have been reduced. However, the rates of tax for non-corporates, such as LLPs, partnership firms and AOPs, continue to be high. Similarly, the tax rates for individuals earning high income are also exceedingly high. Capital gains, other than those under section 111A, 112A or 115AD, are also subject to high surcharge applicable to individuals.	Recommendation: ✓ It is therefore suggested that the rate of tax (including surcharge and cess) for all non-corporate entities (including LLPs and AOPs) should be brought down to 25%. ✓ The tax rates for individuals should be reduced, say to maximum 30% (including surcharge and cess).
2	**Section 2(19AA)** Enabling demergers – need for rationalisation	Conceptually, any form of entity restructuring with virtually the same economic interest / beneficial ownership needs to be tax neutral. This concept is anyway there in the context of amalgamation, demerger, conversion of firm into company, but there are still several gaps which need to be bridged to facilitate Ease of Doing Business without loss to the revenue and it has become much more critical now due to Covid since several groups and entities are considering restructuring of operations to facilitate more efficient operations. Such tax neutrality was referred to in the Budget Speech of 1999-00 (231 ITR (st) 15, para 107) while introducing comprehensive amendments to make business reorganisations fully tax neutral. It is critical to ensure that these uncertainties are removed and exposure to litigation is reduced.	Recommendation: The definition of 'demerger' should be made less restrictive, and 'undertaking' should include shares, held in a subsidiary company (because that is simply a way of holding a business).

		A company often has various divisions and a demerger of such a division would be tax neutral, subject to satisfaction of conditions listed in Section 2(19AA). However, in certain situations, such as for commercial reasons or regulatory reasons, a business is carried out in the form of a subsidiary. Typical examples are companies dealing with infrastructure (eg. Roads) or financial services (eg a financial services entity having a drop-down Asset Management Company). The current definition of demerger is not clear as to whether "undertaking" includes shares of a subsidiary.	
3	**Section 9** Business Connection through Significant Economic Presence	CBDT has prescribed threshold limit of Rs. 2 Crore for determining business connection through significant economic presence. This limit is very low and be reviewed. Further, the concept of significant economic presence should not be made applicable only to the transaction of physical import of goods.	Recommendation: ✓ Increase threshold limit to Rs. 10 crore. ✓ Further, clarification may be provided that business connection on account of significant economic presence will not be applicable to transaction of import of goods.

4	**Section 9B** Section 9B deems the fair market value of the capital asset or stock in trade as prevailing on the date of its transfer as the full value of consideration received or accruing as a result of its deemed transfer by the specified entity for the purpose of computing the taxable income arising therefrom.	There is no corresponding provision whereby the fair market value so considered for the purpose of section 9B is treated as cost of acquisition in the hands of the specified person. In the absence of any express provision, the issue arises as to what is the cost of acquisition of the capital asset or stock in trade in the hands of the specified person when it has been received from the specified entity in connection with the reconstitution or dissolution.	Recommendation: To resolve these difficulties, we suggest- ✓ Insertion of specific provision within section 9B itself to provide that the fair market value as considered under sub-section (3) would be regarded as the cost of acquisition of the relevant capital asset or stock in trade in the hands of the specified person for the purposes of the Act including for the purpose of section 43(1) which defines 'actual cost'. ✓ It may be noted that this view has already been expressed in the Circular No. 14 of 2021 dated 2-7-2021.
5	**Section 10(12)** Taxation of interest allowed by Recognized Provident Fund post retirement / termination of employment	On retirement, the accumulated balance with approved employee provident fund becomes due to employee and is exempt u/s 10(12). Rules permits member keep the accumulated balance for three years post-retirement. However, interest credited on balance of member after retirement is not exempt. In case of Government PF, interest credited on accumulated balance post retirement continue to enjoy exemption u/s 10 (11).	Recommendation: ✓ Tax treatment of interest earned on PF balance with Government Provident Fund and Recognized Provident Fund should be brought at par. ✓ Interest earned by an individual from recognized provident fund even after retirement or termination of employment should be exempt.

6	**Section 12AB-** Cancellation of Registration	PCIT / CIT have power to cancel registration on the occurrence of, among others, following violations- • Application of any part of its income for other than objects of the trust • Application of any part of income for private religious purposes A similar amendment is made in the 15th proviso to section 10(23C) Issues: • 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 overall activities of the trust. • 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.	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. ✓ Alternatively, cancellation of registration should apply where more than 15% of the income of the Trust is applied for other than objects of the trust or for private religious purposes.

7	**<u>Section 12A(1)(ba)</u>** Loss of exemption on late filing of Return of Income	Exemption under section 11 is subject to filing return of income under section 19(4A) before the prescribed due date. <u>Issues:</u> Filing of Return of income beyond the prescribed due date would result in a denial of the exemption. For a technical infraction, the consequence is catastrophic.	<u>Recommendation:</u> ✓ Non-filing of Return of Income before the due date should not result in denial of exemption but only levy of interest/penalty commensurate with the gross receipts/Turnover.
8	**<u>Sections 13(2) and 13(3)</u>** Meaning of 'Substantial Contributor'	<u>Issues:</u> A person who has made contribution of more than Rs. 50,000 to the Trust in a year, is defined as a 'substantial contributor'. If Trust uses or apples any part of its income or property for the benefit of such person or his relative or any concern in which he has substantial interest then the Trust loses its exemption	<u>Recommendation:</u> The amount of Rs. 50,000/- was fixed about 25 years ago, and is not substantial in the present age. Hence the limit of contribution should be increased to 50,00,000
9	**<u>Section 17(2)</u>** Medical reimbursement exemptions Clause (v) of Proviso to Sec 17(2)	Reimbursement of medical expenses on actual basis upto limit of Rs.15,000/- per year was exempt in case of a salaried employee under clause (v) of Proviso to section 17(2). This provision was deleted by the Finance Act, 2018. Small medical expenses and OPD expenses are not covered under the Medical Insurance policy. This is a deserving exemption for large number of salaried class assessee.	<u>Recommendation:</u> Re-introduction of the provisions of medical reimbursement exemption of Rs.50,000 per year.

10	**Section 32** Characterisation of leasehold right acquired as intangible asset eligible for depreciation	To set up business, taxpayers acquire lease rights from government agencies. The terms of the lease require payment of upfront premium. Lease rights are very limited and on expiry of lease, the land is resumed back by authorities. It is not clear whether payment of lease premium for land is revenue or capital and is subject matter of dispute. Currently, there is no express provision under the Act which provides for any deduction of the lease premium.	Recommendation: ✓ The premium is paid for acquiring the rights to use the land and not the land itself as the ownership of the land vests with the lessor. ✓ Accordingly, it should be clarified that the lease rights acquired is an intangible asset eligible for depreciation under section 32 of the Act. ✓ Alternatively, pro-rata deduction of the premium paid should be allowed over tenure of the lease agreement
11	**Section 35(2AB)** Weighted deduction for in-house R&D	Section 35(2AB) allowed weighted deduction of 150% in respect of expenditure incurred on approved in-house R&D Centres. The Finance Act, 2016 withdrew this weighted deduction from AY 2021-22. Currently there is no tax benefit with respect to expenditure incurred towards carrying out in-house research and development activities. According to Ministry of Science and Technology Report, March 2023, India spent 0.64% of its GDP on R&D in 2020–21, while the same amongst other developing BRICS countries was—Brazil (1.3%), Russian Federation (1.1%), China (2.4%), and South Africa (0.6%). This ratio was 0.3% for Mexico. Most of the developed countries spent more than 2% of their Gross Domestic Product (GDP) on R&D. India's per capita R&D expenditure has increased to current PPP$ 42.0 in 2020–21 from current PPP$ 29.2 in	Recommendation: Weighted deduction of 150% u/s 35(2AB) with respect to expenditure incurred on in-house R&D should be reinstated for a period of 10 years.

		2007–08. NITI Aayog has said that India needs to boost this expenditure to at least be on a par with its BRICS or ASEAN counterparts like Russia ($285), Brazil ($173), and Malaysia ($293).	
12	**Section 44AD** Rationalisation of provisions of presumptive taxation	Section 44AD offers a presumptive taxation scheme for small taxpayers. Presently, the scheme is applicable to taxpayers with an annual turnover not exceeding Rs. 2 crores (Rs. 3 crores where cash receipts do not exceed 5% of total receipts). Consequently, numerous micro and small enterprises under the Micro, Small and Medium Enterprises Development Act, 2006 which have turnover in excess of Rs. 2 crores are unable to avail benefit of this provision.	Recommendation: The turnover limit under section 44AD should be aligned with the turnover threshold of Rs. 5 crores (micro enterprises) and Rs. 50 crores (small enterprises) as per the Micro, Small and Medium Enterprises Development Act, 2006. This will facilitate ease of doing business and encourage voluntary compliance.
13	**Section 54EC** Deduction by way of investment in specified boonds	Under Section 54EC of Income-tax Act, 1961, Capital gains arising from the transfer of a long term capital asset are exempt to the extent of Rs. 50 lakhs if invested in certain Bonds. The said limit of Rs. 50 lakhs was fixed in year 2007 Considering the inflation over the years, the said limit of Rs. 50 lakhs is inadequate and does not provide commensurate relief to the tax payer.	Recommendation: The said exemption limit be increased from Rs. 50 lakhs to say Rs. 2 Crore

14	**<u>Section 71(3A)</u>** Loss from house property –	Section 71(3A) restricts set-off of loss from house property against other source of income upto Rs. 2 lacs. This restriction is affecting adversely genuine house buyers. This artificial limit is irrational.	<u>Recommendation:</u> ✓ Permit set-off of loss from house property against income from other sources without any limit. ✓ Alternatively, considering high property cost in metro cities, the limit should be enhanced to Rs. 10 lacs for metro cities.
15	**<u>Sections 80U and 10(14)</u>** Deduction u/s 80U for disabled individuals & for severely disabled individuals is Rs. 75,000 & Rs. 1,25,000 res Deduction for disabled individuals as conveyance allowance u/s 10(14) is Rs. 3,200/- p.m. or Rs. 38,400 p.a. Deductions u/s 10 (14) & 80U are not available under the New tax regime.	Currently there is no tax provision granting a deduction to the disabled taxpayers for purchase of assistive devices or engaging an attendant to help them in performing their daily living activities. A) <u>Difficulties/ Obstacles/ Hurdles Faced:</u> 1) The amounts available as deduction under both sections 10(14) & section 80U were last revised more than 10 years ago. During the last 10 years, the cost incurred by the disabled individuals for conveyance & for daily living has increased substantially. 2) Many disabled individuals need to purchase assistive devices or employ the services of an attendant or assistant to help them in their daily living activities & in their work. For example, blind individuals need to purchase screen reading software to work on computers, employ readers for reading hard-copy documents etc.,	<u>Recommendation:</u> ✓ Deduction u/s 80U for disabled & severely disabled individuals should be increased to Rs. 2,50,000/- & Rs. 5,00,000/- respectibely. ✓ Deduction for conveyance allowance for disabled individuals should be increased to Rs. 5,000/- per month or Rs. 60,000/- per annum. ✓ Deductions u/s 10 (14) & 80U should be allowed under the New tax regime. ✓ An additional allowance named "Care-giver Allowance" or "Assistive devices Allowance" should be provided to disabled individuals & the deduction under this allowance should be Rs. 50,000/-.

		The Government has introduced the New tax regime & has given indications that it is the preferred tax regime. Unfortunately by denying deductions under section 10 (14) & section 80U, the new tax regime has greatly disadvantaged the disabled taxpayers. Allowing these two deductions in the New tax regime will bring the disabled taxpayers much relief & compensate them for the extra cost incurred by them due to their disability. The revision of the deduction limits at regular intervals helps in ensuring the deductions keep pace with rising costs. But the revision of these limits might get overlooked when preparing the budget & linking them to the Cost Inflation Index or another suitable index will automatically raise the deduction limits.	✓ Deduction limits should be revised every 2 or 3 years to keep pace with rising expenses or alternatively, the Cost Inflation Index used for computation of capital gains should be made applicable for calculating deductions with a suitable base year.
16	**Section 115BAB** Extension of terminal date of commencement of manufacturing for the purpose of opting for concessional tax regime	As per section 115BAB, a concessional tax regime of 15% is available to new manufacturing company setup on or after 1st October 2019 and having commenced manufacturing operations on or before 31 March 2024. Certain companies have incurred substantial capex for setting up manufacturing facilities, however, due to unavoidable reasons missed could not commence manufacturing operations by 31st March 2024.	Recommendation: In order to promote manufacturing under the Make in India initiative and provide an opportunity to newly set up companies who are still in the process of commencing manufacturing activity, the sunset date for commencement of manufacturing be extended from 31 March 2024 for a period of two years.

17	**<u>Section 154</u>** Rectification and Appeal Effect Matters	In practice, it is seen that applications filed by assessee for rectification and for giving effect to an order of appellate authority remains unattended. Assessee needs to keep following up the matters and face hardship as many times it is seen that due refunds of assessee is adjusted against demands, which in case rectification or appeal effect is done get deleted.	<u>Recommendation:</u> ✓ Department should introduce online system of filing of any rectification request or request to pass order giving effect to order of appellate authority. ✓ Each such request should be given a unique serial number. The AO should dispose such cases serially on first come first basis. ✓ This will bring transparency. Department authorities will come to know pendency of such requests and tenor of pendency.
18	**Sections 194Q and 206C(1H)** TDS on purchase of goods and TCS on sale of goods	In cases where turnover of the buyer is below threshold limit prescribed u/s. 194Q, the seller is required to collect TCS. Further, in a case where both section 194Q and section 206C(1H) is applicable and buyer makes a default in deducting TDS u/s. 194Q, seller is required to collect TCS u/s. 206C(1H). Considering the minimal rate of 0.1%, it is clear that the objective of section 194Q and 206C(1H) is not revenue collection but the objective is to create a trail of purchase & sale transactions, to track unaccounted transactions and to being them within the tax net. This data is already available with the Tax Department through GST returns.	<u>Recommendation:</u> Sections 194Q and 206C(1H) should not be applicable in the case of GST registered taxpayers.

		Imposing obligation on taxpayer to deduct / collect tax on purchase and sale of goods unnecessarily increases compliance burden of the taxpayer and it goes against the objective of ease of doing business.	
19	**<u>Section 196C</u>** Rate of surcharge for TDS compliance on dividend on GDRs	In case of GDRs, identity of beneficial owner of GDR is not available with the deductor. The rate of surcharge is different for different categories of payees. Therefore, the deductor cannot determine the actual rate of surcharge on TDS on dividend paid to GDR holders. Vide Circular No. 3P dated 01-05-1966, it is clarified that, when shares are registered in the name of banking company, TDS should be deducted at the rates in force applicable to the banking company without regard to the beneficial owner of shares.	<u>Recommendation:</u> For the purpose of section 196C, it should be clarified that surcharge on TDS should be at the rate applicable to the custodian irrespective of the legal status of beneficiary.
20	**<u>Interest u/s 234C</u>** Interest on deferred payment of advance tax	Presently, while processing the return of income u/s 143, CPC is calculating interest u/s 234C basis the total income determined in Intimation u/s 143(1) even though the requirement of Section 234C is to calculate the interest basis returned income.	<u>Recommendation:</u> Computer system need to be updated to ensure that interest u/s 234C should be calculated basis returned income only as per the requirement of Act.

21	**<u>Section 244A</u>** Higher interest on refunds arising pursuant to delayed rectification.	Section 244A(1A) provides for grant of additional interest @ 3% pa where the authorities fail to give effect to an appellate order and grant refund to the assessee within three months period. At times, the authorities pass order giving effect to the appellate order, but correct and full amount of refund is not released. Even after making rectification application, it requires great amount of follow up and invariably there is delay in passing rectification order and release of refund. Section 154 provides that rectification order should be passed in six-month time, but in practice, this time limit is not followed.	<u>Recommendation:</u> ✓ Section 244A(1A) be amended to cover that in case rectification request is not disposed within six months (time limit given in section 154), then the Department need to pay additional interest of 3% pa to the assessee of refund if any. ✓ This will make authorities accountable, and taxpayer need not to run around for legal dues.
22	**<u>Section 254</u>** Powers of ITAT to stay demand	ITAT may grant stay under the first proviso to section 254 subject to the condition that the assessee deposits not less than 20% of the total demand or furnish security of equal amount.	<u>Recommendation:</u> ✓ Amend section 254 and leave it to the judgement of ITAT to decide the percentage of demand to be paid by the assessee depending on the case facts and issue involved. ✓ Such powers are given to the AO by the CBDT and there is no reason why ITAT should be denied off such powers.