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PRE-BUDGET MEMORANDUM OF REPRESENTATIONS – 2024 – 2025 : CORPORATE TAXES

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
1	**Tax Deduction at Source under section 194R of the Act**	Section 194R has been inserted in the Income Tax Act (the Act) by Finance Act, 2022, as per which any person responsible for providing any benefit or perquisite to a resident, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall ensure that tax has been deducted in respect of such benefit or perquisite, at the rate of 10% of the value of such benefit or perquisite. Further clarifications were provided by Circular 12 of 2022 in the form of FAQs. As per Q.3 of the FAQs, it appears that write off of loan/receivable would constitute a benefit/perquisite in the hands of the counterparty, thereby triggering the provisions of section 194R. This was followed by another CBDT Circular 18 dated 13th September, 2022, wherein a carve out from the applicability of TDS u/s 194R has been provided to identified financial institutions such as Banks/NBFCs etc. if they do a one-time settlement with borrowers or waive of loan granted on reaching settlement with borrowers.	The write off of debt happens when in spite of follow-ups and legal actions, a creditor is unable to recover the outstanding amount from its debtor. In such a situation when the debtor is unable to pay or is litigating the dues, the creditor passes entries in its Financial Statements, by writing-off its dues, to show the true value of its receivable in compliance with Accounting and Auditing Standards. The amount of such debt written off in the books of creditor does not amount to a benefit granted by the creditor to its debtor as the claim in respect of such debt would not have been given up by the debtor and in some instances, there may be ongoing litigation for recovery of such dues. If the Creditor, who has already suffered a loss on a/c of write-off of debts due from a debtor, has to deposit TDS on such write-offs u/s 194R @ 10% of the amount so written-off, it will result in a double whammy, since it will end up as a cost to the creditor – reason being, when the creditor is already not able to	1. It should be clarified that write off of bad debts is not a benefit or perquisite within the provisions of Section 194R since the requirement to deduct TDS u/s. 194R will add to the cost of the corporate creditor who has already suffered a loss due to the write off of bad/unrealised debt. 2. Further, it is submitted that, party wise details of write off of bad debts of Rs. 1 lakh or more are already available with the Income tax Department through the Return of Income filed by corporate assessees (creditor) – under the section "**Debits to Profit and Loss Account" – Row No.47**. Additional details, if any, are required in respect of bad debts written off, can be obtained by the Dept. by widening the scope of reporting in the Return of Income, which would enable it to track such delinquent debtors and ensure such debtors offer such unpaid dues as income in terms of Section 41(1) of the Act. 3. Alternatively, if the intent of the Govt. is to continue with the TDS route trail to track assessees not declaring benefits or perquisites received, then it is submitted that

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			recover its dues, there is no chance of it being able to recover the TDS deposited u/s 194R. On the other hand, a delinquent debtor may enjoy a windfall if such TDS credit is reflected in its 26AS statement, since such a debtor will get credit for such TDS deposited by a stressed creditor in compliance with 194R. We do not believe that the intention of the Govt. in introducing 194R is to impose additional cost of doing business by corporate creditors.	the **TDS rate be reduced from 10% to 1%,** for ease of compliance from the perspective of provider of such benefit or perquisite including genuine creditors.
2	**Tax Deduction at Source @ 1% under section 194O of the Act – Applicability on Farmers/FPOs**	TDS is to be deducted by an e-commerce operator which facilitates sale of goods or provision of services by any e-commerce participant. The language of Section 194O is wide enough to bring within its ambit, even digital platforms that may offer services, free of cost or at a marginal fee, to Farmers and Farmer Producer Organizations with a view to enable the farm sector reap the benefits of digitalization and also to enhance farmers income; even though, agricultural income of farmers and income of FPOs are exempt from tax - Refer **Annexure 1** for details.	Indian private sector, including start-ups, have been working on innovative ways to enhance farmers' income. One such initiative is in the Agri-tech space, wherein digital platforms have been developed/operated that disseminate relevant information to Farmers/FPOs on various aspects including prices of farm produce across mandis, weather forecasts, best agri practices to follow etc., which have encouraged digital inclusion of farmers. But, the introduction of Sec 194O is acting as a dampener, since if farmers/FPOs sell their produce or buy agri inputs through such digital platforms, then the platform	It is humbly submitted that **digital platforms operated for the benefit of farmers / FPOs should be excluded from the purview of Sec. 194O** - Refer **Annexure 1** for details.

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			operator will need to deduct TDS @ 1% u/s 194O. Typically, FPOs operate on a thin margin (say, 1%) which if taken away by way of TDS may disincentivise such efforts. Further, farmers may not have PANs which imply TDS will be at a higher rate - Refer **Annexure 1** for details.	
3	**Deduction in respect of Expenditure on Brand Building**	In India, there are numerous foreign brands present across categories, namely, from run-of- the- mill to high-end luxury products. Even for items of daily consumption, the brands consumed by millions of households are predominantly owned by overseas enterprises. Be it baby food, home care, personal care products, tooth pastes, shaving creams, breakfast cereals, tea, coffee, ice creams, confectionary, chocolates, washing machines, laptops, personal computers, refrigerators, mobile phones, televisions, air conditioners, motor cars, etc., the leading brands in the Indian market are the property of foreign enterprises. Every time these products are consumed, precious foreign exchange flows out of the country by way of royalty towards trademarks used, licenses provided, services consumed and so on. This unenviable situation is indeed a disheartening reflection of the competitive capabilities of India's	World class brands lend a huge intangible value to products and services enabling them to command a premium and loyalty from consumers. Moreover, successful brands reflect the innovative capacity & capability of their home countries, act as a 'badge of honour' for their respective countries apart from enriching their national economies. For example, the net sales of **Samsung is equivalent to around 20% of GDP of South Korea**. Similar examples would **include Sony and Toyota in Japan, Apple, Google, Microsoft and Amazon in the US** and **SAP of Germany**. In fact, a successful global brand is a sustained source of wealth creation. Also, world class brands can contribute increasingly to import substitution, value added exports as well as larger value capture from global markets. This, in turn, can	Encourage brand building activities of domestic companies: **Govt. of India should provide tax incentives to Indian companies in form of weighted deduction on brand building expenditure incurred by them. For example, since foreign brands entail a royalty outflow, a similar percentage, say, 5% to 8% of turnover of Indian brands should be allowed as a 'standard deduction' to eligible companies, even if they have opted for concessional tax regime under Section 115BAA or 115BAB of the Income Tax Act, 1961**. Further, during the initial 10-15 years of commercial launch of a brand, a larger deduction of say 10% of turnover from such new brands should be allowed. Such a fiscal incentive will help in the making of such Indian brands globally competitive and thereby **add value to the 'Made in India' label.** This, in turn, would facilitate export of value-

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		home grown brands which are few and far between. However, instead of bemoaning the huge forex outgo in terms of royalty and other payments, it is much more important to align national and corporate energies to create world class Indian brands.	transform the country from one dominated by foreign brands to a player of substance in the global arena. The creation of world class brands demands tremendous staying power with substantial investment commitments over the long run. It requires deep consumer insight, continuous nurturing of R & D, differentiated product development capacity, brand building capability, cutting edge manufacturing and an extensive trade marketing and distribution network. This will also result in job creation and retention of value in the country. With the **Honourable Prime Minister** giving a clarion call for '**Atmanirbhar Bharat'**, '**Go Vocal for Local' and** promotion of '**Brand India'**, there is an urgent need to support any initiative by Indian corporate sector towards creation & growth of Indian brands with commensurate fiscal incentives.	added products out of India earning higher foreign exchange for the country, thereby help in controlling the current account deficit problem on a sustainable basis.
5	**TDS on Dividends paid by companies u/s 194 of the Act**	With effect from April 1, 2020, dividends declared by Indian companies are taxable in the hands of shareholders. Companies will have to deduct or withhold tax for dividends paid to the shareholders.	The requirement of withholding tax on dividend paid to the shareholders has resulted in a huge compliance burden and costs on the Companies. To	1. Govt. of India should look into this issue and provide for a simplified process, including the possibility **of prescribing a**

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		This provision has increased the compliance burden on dividend paying companies, especially of listed entities having large number of shareholders, and goes against the Govt. of India's philosophy of improving the 'East of Doing Business' in the country. There are various classes of shareholders (individuals, trusts, Govt companies, FPIs, Mutual funds, insurance companies, NRIs etc.) each having different withholding tax implications. A company needs to analyse all classes of shareholders and apply appropriate TDS rate. For non-resident shareholders, there are additional requirement of examining tax treaties, tax residency certificates, beneficial ownership, MLI impact, filing of Form 15CA/CB on the income tax portal etc. Besides, checking of compliance with Sec. 139AA / 206AB and applying higher TDS rates, have added to the compliance burden. In the above scenario, dividend payout has to happen within 4-5 days of the AGM. Within this short duration large companies need to file thousands of Form 15CA/CBs in respect of dividend payment to non-residents. Moreover, the compliance timeline is too short if a listed entity desires to declare 'interim dividend'.	illustrate, several intermediaries / consultants have already started providing software solutions for a fee for complying with the complex compliance requirement of TDS on dividends. There is an urgent need for Govt. of India to come out with a simplified compliance provision to improve the 'Ease of Doing Business' quotient.	**uniform rate of say 10% for payments of dividends by listed companies to all beneficiaries, whether residents or non-residents.** 2. Relaxations must be provided in filing of Form 15CA/CBs particularly in cases where full tax has been deducted from dividend pay-out to non-residents.
6	**Foreign tax credit (FTC) u/s 90 of the Act**	As per the provisions of section 90 read with Rule 128 and Form 67, an assessee is entitled to relief of the tax paid in foreign country on the income which is	Revenue Units of foreign countries follow their own time lines for determining the tax liability and	**Necessary amendments should be made in the Act/Rules to incorporate the process of claiming the tax credit, where the foreign tax**

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		also taxed in India, as per the prescribed guidelines. As per Rule 128, for claiming the tax credit under section 90, the assessee needs to file Form 67 along with the proof of payment of tax on or before the end of the assessment year relevant to the previous year in which FTC is claimed by an assessee [as per the recent CBDT Notification No. 100 of 2022]. In cases where the details of such foreign tax payment are available to the assessee company only after the end of the relevant assessment year, the above timeline prescribed for filing Form 67, will continue to act as deterrent to claim the tax credit u/s 90 of the Act. Till now, When such FTC relief is being claimed during assessment, the assessing officers are raising objections citing non filing of such additional claim before the due date of filing the return of income & now may say it should have been claimed before end of the AY. As a result, the assessees are/will be denied tax credit for no fault of theirs, since it is impossible to make such claims in the absence of requisite details, for which Indian assessees are helpless and are dependent on the tax authorities of respective foreign jurisdiction.	recovery of taxes in their jurisdiction. Further, in some cases, where the tax is withheld by foreign customers, there may be delays in receipt of the tax credit certificate. Assessing Officers are disallowing claims for relief on account of foreign tax credits, where the tax credit certificates are received by the Indian assessees after the due date for filing tax returns for a particular assessment year. Notification 100 of 2022 issued by CBDT for the extension for filing Form 67 has been granted only till the end of the assessment year relevant to a previous year, whereas the tax credit certificates might be received even after the end of the relevant assessment year. Neither can the assessee claim the relief in the AY in which the tax credit certificate is received, if the income in respect of which foreign tax has been paid has been included in the relevant previous year's tax returns.	**credit certificates are received by an assessee after the end of the assessment year.** This would avoid hardship for the assessees and will also serve the ends of natural justice.
7	**Significant Economic Presence [SEP]**	Historically. taxability of non-residents depended on their physical presence in India - also referred as 'Permanent Establishment'. However, Govt. of India	The wordings in the SEP provisions [i.e. Explanation 2A to Sec 9] are wide enough to include in its scope even non-	It is recommended that: 1) **Non-digital transactions such as import of**

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		introduced provisions to tax **digital transactions** by inserting Explanation 2A to section 9 of the Act. As per this provision, once a non-resident has a "Significant Economic Presence" (SEP) in India, then he would be deemed to be having a business connection in India (i.e. PE) and consequently would be liable to be taxed in India. In other words, due to this deeming provision, physical presence of a non-resident is not mandatory for it to be taxed in India. SEP provision shall get triggered if the non-resident (not having PE in India) has revenue from transaction in respect of **goods**, services or property with any person in India exceeding Rs. 2 Crs or engages in interaction with 300,000 or more users in India**. In case SEP is triggered, then profits attributable to SEP would be taxable in India.** Consequently, any Indian resident who makes payments to non-residents who have SEP in India, will be obligated to withhold tax prior to making payment to such non-residents. **Though SEP regulations have come into effect, the rules pertaining to profit attribution to SEP have not been prescribed yet by CBDT.**	digital transactions like import of goods etc. where the non-resident seller is neither present physically nor digitally in India.	**goods be excluded from the scope of SEP**; 2) Further, suitable guidelines be issued to clarify the methods for determination of profits attributable to SEP, where these provisions get attracted. The above measures would enable Indian assessees comply with this provision.
8	**Disallowance of expenses relating to exempt income under section 14A**	As per section 14A of the Income Tax Act, 1961, no deduction is allowed in respect of expenditure incurred in relation to exempt income. In the context of the same, the Government has prescribed rule 8D	The stipulation regarding the disallowance of 1% of the annual average of the monthly averages of the value of investment under Rule 8D, is	Therefore, it is suggested that **rule 8D be amended and such that the disallowance is restricted only to the expenditure directly attributable to earning of exempt income**.

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	of the Act	as per which the disallowance will be determined as below: (i) The amount of expenditure directly relating to exempt income; and (ii) 1% of the annual average of the monthly averages of the opening and closing value of investments, income from which is exempt from tax. Invariably, the assessing officers resort to Rule 8D and end up disallowing 1% of the annual average of the monthly average of investments earning exempt income. It may be noted that the average yield from Tax-free Bonds is around 5% in today's market conditions. Consequently, disallowance @ 1% will be highly disproportionate to the exempt income earned, which is not the intent of the Govt.	very harsh since it has no relationship with the earning of exempt income. In fact, this could result in adhoc and excessive disallowance and in some instances, there could be cases, where the disallowance exceeds the total exempt income earned during a financial year. This is even worse when investments are made at the end of the accounting year, say on 31st March. Also, as per current accounting systems, corporates are not required to do any book closing on a monthly basis and therefore this would result in additional work for the sole purpose of determination of disallowance. Further, the system of disallowance under Rule 8D does not distinguish between an assessee investing from own funds vs borrowed funds, since the disallowance in both the scenarios is the same. As a result, the assessee investing from own funds is at a disadvantage since it suffers a higher disallowance despite lower cost of investment.	With respect to the disallowance for administrative expenditure, it should be determined by estimating the time of the personnel and resources involved for undertaking the administrative activities which result in earning of the exempt income. The aforesaid estimation should be done on a reasonable basis after considering the facts of each case and this should be certified by the Tax Auditor. In case this is not feasible, then the **total disallowance u/s 14A be restricted to 0.5% of the exempt income** instead of 1% of average value of investments.
9	**Retirement Funds**	(i) As per rule 87 of the Income Tax Rules, the employer is permitted to make a total	(i) In the context of the current rates of interest and the high cost of	(i) It is recommended that the **ceiling of contribution as per Schedule IV of Part A**

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		contribution not exceeding 27% of the employee's salary in respect of Provident Fund and Superannuation. However, as per schedule IV of Part A rule 6 of the Income Tax Act, the employer is permitted to contribute up to 12% of the employee's salary in respect of Recognised Provident Fund. In other words, the Income Tax Law permits contribution up to 15% for Superannuation and 12% for PF. (ii) Further, the Finance Act 2020 has introduced a ceiling of Rs.7.50 lakhs for employers to contribute in PF & Superannuation Funds, beyond which such contributions are taxable as perquisite in the hands of the employees concerned u/s 17(2)(vii) of the Act. Even the interest or income earned/accrued on such excess contribution is also taxable as a perquisite in employee's hands.	annuities and considering that pensions are in any case taxable in the hands of the employees at the time of receipt, it is suggested that the sub-limit of 15% (within the overall ceiling of 27%) for Superannuation should be done away with. (ii) This is leading to a situation where employees are paying perquisite tax and employers are not getting deduction of the amount contributed (in excess of prescribed limits) – a classical double whammy.	**Rule 6 of the Income Tax Act should be abolished.** As an alternative, if the Government still wants to continue with an overall limit for PF and Superannuation contributions (in line with the current stipulations in the Income Tax Rules), then such overall limit on contribution to retirement funds should be increased to 35%. (ii) Further, companies should be encouraged to contribute to the retirement corpus of its employees by allowing them full tax deduction for such contributions, since now that the employees are anyway getting taxed on contributions (including interest accrued thereon) in excess of Rs.7.5 lakhs p.a.
10	**Deduction in respect of employment of new employees – 80JJAA of the Act**	The amended provision u/s 80JJAA of the Act allows the companies (including existing companies) to claim additional deduction @ 30% of the additional cost of the employee joining employment. The said deduction is available over subsequent years as well. The term "employee" however excludes employees with salary more than Rs 25,000 per month, retainers and contractual employees (without retiral benefits) and employee employed for less than 240 days (apparel, footwear and leather industry less than 150 days).	The section should be amended suitably (see recommendation) to incentivize deserving corporates providing employment opportunities, especially since employment generation is a key issue for the country.	The **ceiling of salary for employee eligible should be increased from Rs 25,000 pm to Rs 50,000 per month and the total deduction be spread over 2 years instead of the existing 3 years**. All whole-time retainers and contractual employees who are employed with a company and who fall within the above salary ceiling of Rs.50,000 per month, should be included. Since, hotel industry is also seasonal, similar to

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		Further the requirement covers only whole-time employees of the company leaving aside a large spectrum of employees who are contractually engaged by certain industries such as Hotels. It may be noted that Hotels are legally liable to pay salary apart from contribution to PF & ESI in respect of contractual employees. In such cases, manpower supplier will be claiming the tax deduction on the salary paid under this section; whereas, such benefit should actually be made available to the companies that engage such contract workforce. Finance Act, 2018 made an amendment stating that where an employee is employed during the previous year for a period of less than 240/150 days, but is employed for a period of 240/150 days in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year. However, it has not been clarified that in which year the said employee should be considered for the purpose of determining the total number of employees.		apparel and leather industry, employees employed for over 150 days (instead of 240 days) should be included. All payments to man-power supply agencies (excluding the PF and a profit margin of 20%) should be allowed as a deduction to the company that engages such contract services (if the total number of days of engagement exceed 150 days) in a year and not to the manpower agencies. In case of an employee completing specified days employment in the subsequent year, it should be clarified that though the deduction for the said employee will be available from the succeeding year, but the employee could be considered for the purpose of determining the total number of employees in the previous year in which he/she is employed.
11	**Allowability of Payment of Premium of Leasehold Land as a Revenue Expenditure**	Under the IndAS 116, the upfront premium paid on leasehold land held under operating lease is charged to the statement of profit and loss account as amortisation of leasehold land value (i.e. Right of Use Asset) on a proportionate basis over the life of the lease period.	The lessee does not and cannot have any ownership right over the leasehold land. Payment of upfront lump sum lease premium is nothing but essential business expenditure and does not generate any capital asset and hence are purely revenue in nature.	**CBDT should come out with instructions clarifying that upfront premium payments for leasehold land, should be allowed as a business expenditure** eligible for income tax deduction in the year of debit in the statement of Profit and Loss of a company.

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		However, Assessing Officers do not allow deduction for such expenditure claimed by a company on the ground that it is in the nature of purchase of land, which is capital in nature.	These are just like payments made under any operating lease to utilise the leased property for the purposes of the business of the lessee and hence should be allowed just like any other business expenditure for tax purposes. Therefore, these expenditures should be treated as tax-deductible expenses	
12	**Compliance burden in section 206C(1H)**	As per the provisions of section 194Q and section 206C(1H), if TDS u/s 194Q is not deducted by the buyer, the provisions of section 2906C(1H) are applicable to seller.	The seller usually takes a confirmation from the buyer on whether TDS u/s 194Q will be deducted by the buyer on the transactions between them. On receiving such confirmation, the seller does not collect TCS u/s 206C(1H). However, as a result of the provisions of section 206C(1H), the seller needs to constantly monitor the compliance u/s 194Q made by the buyer. It is very cumbersome to do in case of large organizations having huge number of transactions. The non-compliance of section 194Q by the buyer may come to the notice of the seller with a time lag which results into payment of TCS u/s 206C(1H) by the seller along with interest. The said interest is again disallowed to the seller by the income tax department.	It is recommended that **if a buyer is required to comply with the provisions of section 194Q, the seller should not be required to comply with TCS u/s 206C(1H) due to non-compliance by the buyer**. The income tax department should proceed against the buyer for non-compliance as per the provisions of the Act.

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13	**Effect of order of high court/tribunal in case of business reorganization u/s 170A**	Section 170A requires the successor company in a business reorganization (i.e. amalgamation, merger or demerger) to file a modified return of income, if a return of income has been furnished by an entity to which such order applies prior to the date of order of high court/tribunal. Such modified return should be furnished within a period of six months from the end of the month in which such order is issued. While the Sec 170A provides for filing of modified return by the successor company, there is no provision for filing modified return by the predecessor company, though the Memorandum mentions the same. Secondly, the section provides for 6 months extension only in cases where the return has been filed before the order of the HC or Tribunal. There is no provision for extension of time in cases where the date of the order of the HC / Tribunal is prior to the return filing date.	The memorandum to the Finance Bill, 2023 states that this section would also enable modification of the returns filed by the predecessor entity, wherever required. However, the section extends the timeline only for the successor company and NOT to the predecessor company. Further, the timelines are extended only in a case where the return of income has been furnished by an entity to which such order applies. However, in a case where the return of income has not been furnished as on the date of order of high court/tribunal, the predecessor & successor companies may find it difficult to give effect to the order in the return of income as there is a possibility that the order may come near the return filing due date. In such a case, both the predecessor and the successor companies will be under pressure to file return and may not be left with sufficient time for verifying the information submitted in the return of income. For e.g. if the due date of the return of income is 30th November and order of the tribunal is issued on 20th November,	It is, therefore, recommended that- 1. The extended timeline for furnishing return or modified return should be applicable to all entities involved in a business reorganization – i.e. both predecessor and successor entities; and 2. The timeline for filing the return or modified return should be independent of the status of filing of return by the predecessor entity. In other words, both predecessor and successor entities should be given 6 months from the date of the order of HC / Tribunal or the actual date u/s 139, whichever is later.

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			the companies will be left with only 10 days to file their respective return of income.	
14	**Perquisite Valuation of Rent-Free Accommodation provided by Employers**	As per the Income Tax Act, 1961 ('the Act') if an employer provides residential accommodation to its employees free of cost or at concessional rates, the value of such benefit is taxable as perquisite in the hands of the employees. The taxability of such rent-free accommodation is governed by Section 17(2) of the Act. Further, the valuation of such perquisite is determined in accordance with Rule 3 of the Income Tax Rules, 1962 ('the Rules') In order to bring consistency in the valuation method used to compute the taxable value of these perquisites, amendments were made to section 17(2) vide Finance Act, 2023 with effect from the financial year beginning 1st April, 2023. Pursuant to such an amendment, the Central Board of Direct Taxes (CBDT) vide Notification No. 65/2023 dated 18th August 2023 & Notification No. 72/2023 dated 29th August 2023, has amended Rule 3(1), providing the revised method for the valuation of rent-free accommodation.	Amended Rules are with effect from 1st September, 2023 As per CBDT Notification dated 18th August, 2023, the amended Rules shall come into force with effect from the 1st day of September, 2023. It is imperative to note that the provisions of section 17(2) of the Act were amended vide the Finance Act 2023 giving powers to the CBDT to prescribe valuation mechanism by way of rules. The said amended provisions are applicable with effect from assessment year beginning 1st April 2024 and shall accordingly be applicable for Assessment Year 2024-25 and subsequent Assessment Years – i.e. financial year beginning 1st April, 2023. Further, it may be noted that the computation of the estimated income is a substantive provision, and it is well settled law that the substantive provisions as applicable on the 1st day of the Assessment Year are to be applied to the relevant previous year (i.e. for the full period starting 1st April till 31st	In view of the above submissions, it is recommended that CBDT issue clarifications as below: - that the amended valuation rules will be applicable for the full year effective 1st April, 2023, in respect of employees who continue to be in service beyond 31st August, 2023; - that no change is required in respect of TDS deducted by employers u/s 192 of the Act in line with old rules for employees who retired or left services on or before 31st August 2023. Alternatively, CBDT can carry incorporate the above clarifications when it issues its annual circular for "Deduction of Tax at Source: Income-Tax Deduction from Salaries under Section 192 of the Income Tax Act, 1961".

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			March). Moot Questions In above context, the moot question is whether - because of the amended rule has come into force from 1st September 2023, the effect of the amended rule can be implemented for determining the employee's (estimated) income u/s 192(1) of the Act for the full year 2023-24 (on the basis that the amended rule applies on the first day of the assessment year 2024-25); and the corresponding TDS be made from September 1, 2023 by using the amended income of the full year. This would entail the excess tax deducted from April to August 2023 would get adjusted against tax deductible from September 2023 onwards. This can be illustrated as below - Case 1: Employee retiring / leaving on or before 31 August 2023 Under this case, since the employee has already retired / left the Company, there cannot be any question of revising the taxes which has already been deducted till August 2023 and deposited within the applicable due date. Accordingly, no	

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			adjustment is required for the same. Case 2: Employee continuing to be employed beyond 31 August 2023 Reference is invited to section 192(3) of the Act which permits the employer to increase or decrease the amount of tax to be deducted for the purpose of adjusting any excess or deficiency arising out of previous deduction or failure to deduct. In other words, where the employer has deducted excess tax in any month for any reason, the employer may adjust the amount of tax to be deducted for the subsequent month. Accordingly, in the instant case, given that the amendment in the substantive provision of law would be applicable for the entire previous year 2023-24, the employer would re-compute the estimated income based on the amended Rule 3 in the month of September 2023 and deduct taxes at source on or after September 2023 based on the revised estimated income so determined. CII Factor to be considered in respect of same employee staying in the same accommodation As per the third proviso to the amended Rule 3(1), where the accommodation is	

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			owned by the employer and the same accommodation is continued to be provided to the same employee for more than one previous year, the perquisite amount calculated in accordance with revised rules shall not exceed the amount so calculated for the first previous year, as multiplied by the amount which is a ratio of the Cost Inflation Index for the previous year for which the amount is calculated and the Cost Inflation Index for the previous year in which the accommodation was initially provided to the employee. In other words, the perquisite value for future years will get capped to the CII factor applied on the base perquisite value. As per the Explanation contained in the amended rules, "First previous year" means the previous year 2023-2024, or the previous year in which the accommodation was provided to the employee, whichever is later. If one were to assume that the perquisite value for the financial year 2023-24 is to be computed on a mixed basis – i.e. as per the old rules from 1st April, 2023 till 31st August, 2023 and as per the new rules from 1st Sept. 2023 till 31st March, 2024, then this mixed	

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			perquisite value would form the basis for future years, in case of same employees occupying the same accommodation provided by an employer. Such a computation would not only be complicated but would also deprive the employees the beneficial intent of the revised valuation rules.	

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Annexure 1

Implications of TDS u/s 194 O of the Income Tax Act, 1961

Background

The Finance Act, 2020 introduced a new TDS provision, namely, Section 194O with effect from 1st October 2020. The relevant clauses of this Section are summarised below:

Where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such e-commerce operator shall, at the time of credit of amount of sale or services or both to the account of the e-commerce participant or at the time of payment thereof to such e-commerce participant, by any mode, whichever is earlier, deduct income tax @ 1% of the gross amount of sales or services or both.

Explanation: Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of TDS u/s 194O.

For the purpose of Sec. 194O, e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.

"E-commerce operator" manes a person who owns, operates or manages a digital or electronic facility or platform for electronic commerce.

"E-commerce participant" means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.

"Electronic commerce" means the supply of goods or provision of services or both, including digital products, over digital or electronic network.

As per the above provisions,

(i) It is obligatory on the part of an e-commerce operator to deduct TDS @ 1% on sale of goods/services by any e-commerce participant, facilitated through its digital or electronic facility or platform;

(ii) TDS needs to be deducted at the time of payment or credit to the e-commerce participant, whichever is earlier;

(iii) In case the payment is directly made by the purchaser to a seller of any goods/services, facilitated by an e-commerce platform, even then, such a payment shall be deemed to have been made by the e-commerce operator and consequently, the e-commerce operator shall be liable to deduct TDS @ 1%.

As per the Memorandum to the Budget, the rationale for introduction of this Section 194O was to widen and deepen the tax net by brining participants of e-commerce within the tax net – i.e. scores of buyers/sellers on e-market places such as Flipkart, Amazon etc. However, the way the Section has been worded, it brings within its sweep, even digitally enabled platforms created for helping Indian farmers and Farmer Producer Organisations ("FPOs"), which could not have been the intent of the Government, as explained below.

Issues

With the advent of cutting-edge new age digital technologies, even the agricultural sector is fast moving towards digitisation to unlock the potential of India's farmers. The Government's initiatives to promote FPOs in order to enhance market access for farmers and leverage economies of scale are expected to reap rich dividends for the agri sector in the medium term. FPOs have tremendous potential to serve as major enablers in augmenting farm livelihoods, by acting as a crucial link between markets and individual farmers, especially those with small and marginal land holdings. It is to be noted that FPOs typically operate on wafer thin margin of say 1%. If they are to pay TDS @ 1%, FPOs will not be left with any buffer to service their farmer members since there will be a considerable time lag by the time FPOs will get refund of such (i.e. after their annual tax returns are processed) – this will also block their scarce working capital flows.

Presently, several digitally empowered platforms are available to farmers and FPOs which deliver customised solutions through synergistically integrating NextGen agri-technologies. These include price discovery digital platforms in local languages, e-marketplace for agri inputs and farm outputs apart from related services, wide range of advisory services covering weather forecasts, agronomy advisories, best practices for improved productivity, quality assurance, etc. These digital platforms, inter alia, enable farmers and FPOs to buy/sell agri inputs and farm outputs.

In fact, some industry players, to supplement the Government's objective of doubling farmers' income, have embarked upon various initiatives to assist the farming community, including developing / operating digital platforms (on a no fee or marginal fee basis), to encourage farmers and FPOs onboard into such platforms and leverage the power of digital including price discovery for their produce, ease of buying/selling agri inputs/outputs, get visibility of prices for various agri produce across the country, get access to latest and best agri practices and so on. In turn, such initiatives are intended to provide freedom to farmers in selling their produce at the best price possible and maximise their realisations.

However, going by the wordings of Section 194O of the Act, any transaction that may be undertaken by FPOs / farmers in such digital platforms, would fall within its purview. In such a scenario, the digital platform creator will be considered as the "e-commerce operator", who will need to deduct TDS u/s 194O from the sale proceeds of farmers/FPOs. The following are the practical difficulties in this regard:

1. **TDS on Farmers:** The agricultural income of farmers is completely exempt from tax. Therefore, they should not be subjected to TDS. Further, many farmers will not have PAN or may not be filing their return of income. In such cases, the burden of TDS will be 5% as per provisions of section 206AA and 206AB of the Act. In absence of PAN/return filing, deduction of TDS @ 5% u/s 194O from the sale proceeds of farmers, will be an additional cost, thereby reducing their net realisations.

2. **TDS on FPOs:** The income of FPOs relating to the eligible agriculture related business is also entitled to 100% deduction under section 80PA of the Act till 31st March, 2025. Consequently, even FPOs should be given an exemption from the applicability of TDS under section 194O of the Act.

3. **Difficulty for E-commerce Operator:** Section 194O of the Act casts the responsibility of deducting TDS on the E-commerce Operator – i.e. the party which has created/managing or operating the digital platform for the benefit of farmers/FPOs. The following issues arise if such platform creators/operators have to apply the provisions of Section 194O of the Act on the farmers/FPOs:

a. Typically, farm produce are purchased by FPOs from the farmers only after physical inspection for quantity, quality etc. – such physical activities which are critical for consummation of a purchase/sale transaction in agri produce, are out of the digital platforms. In this background, all that the digital platform does is to create visibility to farmers on the demand for their produce, going rates/prices in various mandis, price on offer from FPOs etc. Similarly, FPOs get to know about availability of farm produce, location, price expectation of farmers etc. If both the parties – i.e. FPOs and Farmers agree on selling/buying the agri produce, then they get in touch with each other and proceed with the physical leg of the transaction as explained in the beginning of this paragraph. Similarly, FPOs, having bought the agri produce from farmers, may sell the same to private sector buyers offline.

   In such a scenario, in both the legs of the transaction – i.e. sale of agri produce by farmers to FPOs and in turn by FPOs to private sector buyers, the sale proceeds do not go through the digital platform operator, though the transactions might have been facilitated by the digital platform operator.

   It is to be noted that a purchase/sale interest expressed on the digital platform by FPOs/farmers may or may not fructify or even if fructifies, it may get concluded at a different price that what is displayed on the digital platform. In short, the final execution of such transactions take place offline and the actual status of the transaction will not be known to the digital platform operator.

   In the absence of complete information regarding the fructification of the transaction and the amount at which the transaction has finally been executed, the digital platform operator will not be aware of the amount on which the TDS should be deducted.

   In fact, there may be a time lag between the recording of the transaction on the platform and actual execution of the transaction. In such cases the timing of TDS will also not be known to the operator.

b. Further, as explained above, where the payment to the participant (farmer) is not routed through the digital platform operator, the operator will need to deposit the TDS on its own (which in most cases will be 5% in absence of PAN/return filing), since the operator will not be able to collect the TDS from the farmers or FPOs. Consequently, the said TDS will become a cost to the digital platform operator. And in the absence of PAN details, no party will get credit for the TDS so deposited by the platform operator with the Govt.

It is humbly submitted that the application of TDS u/s 194O of the Act will become a big cost burden on the farmers and will discourage them from leverage such digital platforms. On the other hand, if such TDS needs to be deposited by the digital platform operator from their own pocket, it will become a cost to the operator and so

they will also not be willing to invest in creating and/or operating such digital platforms. To summarise, implementation of the TDS provision u/s 194O on digital platforms used by FPOs, farmers etc., will seriously hamper the digital inclusion of the farmer community.

Recommendation:

The language of section 194O should be suitable amended to ensure that only actual e-commerce platforms which are not merely means of communication but where actual transaction takes place are covered in the ambit of section 194O. Further, suitable clarifications should be provided how to comply with this provision in cases where the digital platform lack complete visibility on the timing and the quantum of the transaction undertaken between farmers and FPOs.

Where, the payment is made directly by the purchaser of goods (say, FPOs) to the e-commerce participant (i.e. farmers), the e-commerce operator does not make any payment from which the TDS can be deducted. In such cases liability should not be cast on the e-commerce operator to deduct TDS. In any case the purchaser will be making appropriate TDS on the payments being made to the e-commerce participant, where applicable. In view of the practical difficulties explained above and to encourage inclusion of farmers in the ongoing digital revolution, **it is recommended that e-commerce operators facilitating transactions in goods and services (including agri inputs and agri produce outputs) by FPOs and farmers should be exempted from the provisions of Section 194O of the Act**.

PRE-BUDGET MEMORANDUM OF REPRESENTATIONS – 2024 – 25 : CORPORATE TAXES – PROCEDURAL ISSUES

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
1	Time limit for disposal of appeals by Commissioner of Income Tax (Appeals) [CIT(A)]. Time limit for disposal of remand report sought by CIT(A) by the Assessing Officer (AO)	Section 250(6A) of the Income Tax Act, 1961 provides that CIT(A), where possible, decide an appeal within 1 year from the end of the financial year in which such appeal is filed. However, appeals to CIT(A) are not being disposed for a long time resulting in prolonged litigation for settling disputes arising from assessments. In many cases, either there are no hearings, or even after hearing the appeal, CIT(A) does not pass the order and the appeal remains pending without any fault of the assessees, since there are no statutory timelines to pass an order. Further, no time limit has been specified in the Act for disposal of remand report by the AO. Due to non-disposal of remand report, the appeal procedure gets stalled.	Lack of specific timelines for disposal of appeals by CIT(A) as well as disposal of remand report of CIT(A) by the AO result in undue hardship to the assessees since large tax refunds are stuck due to such pending appeals.	Delay in disposal of appeal and resulting pending litigation is against the professed policy of "Ease of Doing Business" of the Government. It is therefore recommended that **statutory time lines be prescribed for disposal of the appeals by CIT(A)**. Further, **timelines should also be specified for disposal of remand report by the AO**. On expiry of the specified timeline, there should be a provision for deemed disposal. Appropriate measures should be specified in the law to ensure the implementation of the prescribed timelines.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
2	Reassessment - section 147/section 148 of the Act:	Reopening of assessments under section 147/148 of the Act has become a very common occurrence and such notices are being served in large nos. all over the country. It appears that there is no consideration in following the principles on the subject laid down by the Hon'ble Supreme Court and High Courts over the years. Simple audit observations, even on points of law, are frequently being used as grounds for re-opening assessments is leading to extreme harassment to all assessees. Absence of any value limit for reopening cases within 3 years, may lead to reopening of cases even for petty amounts resulting into undue harassment and litigation. This is particularly relevant in case of very large taxpayers. Proviso to section 147 has been inserted to provide that the Assessing Officer may assess or reassess other than matters which are the subject matter of any appeal, reference or revision. However, in respect of matters which have already been examined at the time of original assessment, the current law as laid down by the various courts categorically stipulates that reassessment of the same cannot be done since it will result in '**change of opinion'**. Moreover, it does not make sense to keep on assessing/reassessing the same matter again and again. The annual income tax assessment/reassessment procedure should be a routine process and this proviso cannot be treated as excessive powers in the hands of AO to harass assessees **Value limit for Reassessment** The new section 149(1) prescribes the value limit (income escaped Rs. 50 lakhs or more) for Reopening assessments beyond 3 years. However, no value limit has been prescribed for reopening of cases within 3 years. **Re-opening merely based on statements made by third parties** There has been plethora of cases wherein, the income tax department has reopened cases based on unsubstantiated statements made by third parties to the investigation wing of the income tax department. The assessing officers have been blatantly reopening cases based on such information without any application of mind and without any evidence.	In the context of the changing scenario, it is imperative that reassessments should be restricted to only exceptional cases since the normal assessment process is undergoing a very major change at the current juncture. Mechanical reopening of cases based on unsubstantiated third party statements made to the investigation wing of the income tax department have been repeatedly quashed by various judicial authorities including by Hon'ble Supreme Court. Reopening such cases leads to severe harassment of taxpayers and avoidable litigation costs since majority of these cases are quashed at appellate levels. This provision will become draconian for large Corporate Assessee as the time limit for reopening of assessment has been enhanced to 10 years vis a vis the earlier time limit of 6 years in almost all cases, since the value limit of Rs.50 lakhs is likely to be exceeded in such cases. Further , most of the Corporate Assessee would not have documents to fight for their case since the Company Act requires companies to maintain documents and financial records only for 8 years.	It is suggested that 'change of opinion' of the AO cannot be a ground for re-opening assessment under the garb of 'income having escaped assessment'. The new proviso to section 147 should also state that all matters which have been examined in the original assessment should not be reassessed. Even for reopening of cases within 3 years, there should be some value limit (say, value exceeding Rs.25 lakhs). Reopening should be allowed only based on some credible evidence rather than on the basis of unsubstantiated information or based on mere statements, that too uncorroborated statements (without offering any opportunity to the assessee for cross examination), by third parties. Further, in case of large Corporate Assessees, (i.e. paying tax more than Rs.1000 Crs), Rs.50 Lacs of tax impact is relatively small. For such large Assessees, the financial threshold for reopening beyond 3 years should be a percentage of tax or a fairly significant value limit of say Rs.10 Crs. instead of the current Rs.50 lakhs limit. Further, the maximum time limit for reopening should be restricted to 7 years after the end of assessment year in line with the requirement for maintenance of books of account under the Companies Act.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
3	Tax on Income from Transfer of Carbon Credits	Finance Act 2017 inserted section 115BBG of the Act to provide concessional tax @ 10% on income from transfer from carbon credits. The Memorandum stated as under: *"Carbon credits is an incentive given to an industrial undertaking for reduction of the emission of GHGs (Green House gases), including carbon dioxide which is done through several ways such as by switching over to wind and solar energy, forest regeneration, installation of energy-efficient machinery, landfill methane capture, etc……. to encourage measures to protect the environment, it is proposed to insert a new section 115BBG".* However, the concessional rate of 10% would be allowed only if they are validated by United Nations Framework on Climate Change (UNFCC), which has made it challenging to claim the deduction.	The market for carbon credits is no longer an active market and so obtaining UNFCC validation is not feasible. Alternative initiatives on similar lines as UNFCC have been developed under Indian regulations viz. Renewable Energy Certificates, Energy Saving Certificate which are governed by Central Electricity Regulatory Commission, Bureau of Energy Efficiency and other statutory Indian regulations, since the objective is to encourage environment protection.	It is suggested that suitable amendments be made in Section 115BBG of the Act to ensure that the benefit is not restricted only to carbon credit units validated by the United Nations Framework on Climate Change. It must be extended to all the instruments issued under the Indian regulations, which meet the desired objectives of environment protection as envisaged in the Memorandum.
4	Processing of Return of Income by CPC – Section 143(1) of the Act	Section 143(1) of the Act provides for processing of return by computation of income/loss after making certain adjustments as prescribed, which, inter-alia, includes disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return. Debatable issues cannot be the subject matter of adjustment in 143(1) order.	CPC unit of the Income Tax department is making additions on issues which are debatable such as disallowance of club expenditure, TDS/TCS credits etc.	Appropriate changes must be brought in the Act to ensure no additions on debatable issues are done by CPC u/s 143(1) of the Act.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
5	Rectification of Mistakes Apparent From Record- Section 154 of the Act	Section 154(8) of the Act stipulates that where application for amendment is made by assessee for rectifying any mistake apparent from record, the income-tax authority shall pass an order, **within a period of *six months from the end of the month* in which such an application is received**, by either making amendment or refusing to allow the claim. In fact, CBDT tried to address the issue of delays in disposal of rectification application/petition vide instruction No. 01 of 2016 dated 15.02.2016 directing that the time-limit of six months mentioned in section 154(8) of the Act is to be strictly followed by the assessing officer while disposing off the rectification application filed by the assessee.	However, it may be noted that time limit of six months is not being observed in deciding the applications. In many cases, the assessee has to file repeated applications because an application on which order has not been passed within six months is considered by authorities as lapsed or no longer valid.	It is therefore suggested that suitable provision should be introduced in the Act to the effect that if the application for rectification is not rejected within the prescribed time, it would be deemed that the application has been allowed and the AO should be bound to rectify the mistake;
6	TDS under section 194J of the Act	Prior to Finance Act 2020, TDS @ 10% was applicable on Fees for professional or technical services. To reduce litigation between the applicability of 194C and 194J of the Act, Finance Act 2020 reduced the rate for TDS u/s 194J in case of fees for technical services (other than professional services) to 2% from the existing 10%. Whereas, the TDS rate for professional services remains @ 10%.	TDS on technical services is 2%, whereas TDS on professional services remains 10%. However, the list of professions notified also includes the profession of technical consultancy. Therefore, in case the assessee deducts 2% TDS on technical services, the same can be disputed by the income tax department as a professional service and therefore liable for TDS @ 10%. In absence of clear guidelines, there can be a lot of litigations on this issue.	It is recommended that appropriate amendment be made in the Act to remove the ambiguity in classification of professional services and technical services.

7	Order Giving Effect to the Order of Appellate Authorities	Section 153(5) of the Act stipulates that AO is required to pass the order giving effect to the order of appellate authorities ***within 3 months from the end of the month in which the order is received***. Further, section 244A(1A) of the Act provides that if the AO does not pass the order giving effect within the time limit of 3 months, the assessee shall be eligible for an additional interest on the refund amount @3% per annum from the period after the expiry of 3 months to the date of refund. In fact, CBDT had issued a direction to its subordinate authorities vide Instruction No. 8 of 2011 which directs the AO to give effect to the order of the CIT(A) in a timely manner.	The letters filed with the Assessing Officer for passing order giving effect to the order of appellate authorities are not discharged by the assessing officer within the time frame and there are delays while passing order giving effect. In many cases, the Assessee has to file repeated reminder letters and constantly follow up with the AO to pass the order giving effect to the order of CIT(A). It has also been observed that once the appeal effect order is delayed beyond the time stipulated u/s 153(5) of the Act, the income tax officers are hesitant to pass the order giving effect at all since they do not want to show interest u/s 244A(1A) of the Act in the orders which will show the delay on their part in issuing the order giving effect. This is resulting in severe financial distress to the assessees.	It is therefore suggested that- i. the rate of additional interest be increased from 3% to 6% per annum for the time period from the expiry of 3 months till the date of refund; and ii. there should also be stricter consequences in case of delay in passing the order giving effect within the time limit specified u/s. 153 of the Act.
8	Incorrect processing of Income Tax Returns	The provisions of MAT under section 115JB of the Act are not applicable to companies opting for the tax regime under section 115BAA of the Act.	It has been observed that the while processing the returns u/s 143(1), for assessees who have opted for section 115BAA, MAT liability is being computed and demand raised.	Systems should be put in place to process the returns correctly to ensure that such fictitious demands are not raised resulting in hardship to the assessees.
9	Finance Act - Form 1 (Yearly Statement of Equalisation Levy)	Equalization Levy (EL) is payable at the rate of 6% on payments made to non-residents for online advertising. The annual return Form 1 is to be filed by the residents deducting the EL; the return seeks details of liability and challan details of how such liability has been discharged.	The Form 1 is thereafter processed by CPC. There is no order issued to the assessee on such processing of the Form 1. In case any demand is raised on such processing, it shows online as pending demand under the assessee's PAN. There is no way for assessee to file an appeal against such demands or file a rectification against the demand. Also, there is no method specified in the online portal for paying the demand generated through a Challan.	It is therefore recommended that the Income Tax Website should introduce a module for correction/revision of Form 1 and discharging of liability through payment in case a demand is raised on processing of Form 1.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
10	Form 27EQ (Quarterly Statement of Tax Collection u/s. 206C of the Act)	On a conjoint reading of Section 206C(1H) and Section 194Q of the Income Tax Act, there would be no obligation on a Seller of Goods to collect tax at source from the Buyer on the sale consideration, where the underlying transaction is subject to TDS under Section 194Q of the Act. However, if the Buyer fails to comply with Section 194Q, then the Seller would have an obligation to collect taxes at source. A TCS collector is required to report the transactions on which TCS has been collected. Additionally, the collector is also required to report transactions wherein TCS is not collected on account of TDS being done by the payer. In such a case, the TCS return also requires the TDS challan number and the date of remittance of TDS by the payer.	Columns 680 to 681C of revised Form 27EQ requires a TCS collector to report transactions wherein TCS is not collected on account of TDS being done by the payer. The requirement to disclose TDS challan and TDS remittance date by the payer creates significant challenges to comply with. Further, it also involves significant time and effort despite which an assessee cannot ensure full compliance, as enumerated under: (a) The charge of TDS is on accrual/payment basis (earlier of the two), whereas the TCS obligation is at the time of realisation of sale consideration. Therefore, the very basis of these two transactional taxes is different. So, it is very difficult to track and reconcile the same for reporting purposes (especially in cases of voluminous sale invoices / bulk payments/ timing differences). (b) Secondly, Buyers cannot immediately furnish TDS challan and remittance date – reason being, the obligation to remit TDS falls in the subsequent month and therefore it is difficult for a	Pursuant to introduction of Section 194Q by the Finance Act, 2021, the Government would already have the data of sale of goods on which TDS is supposed to be deducted. Therefore, reporting such transactions again in the TCS returns makes the process redundant, in addition to the impossibility of compliance as highlighted herein. Therefore, columns 680 to 681C of revised Form 27EQ (TCS Form) should be done away with, atleast for purchase/sale of goods which attract provisions of Section 194Q & 206C(1H) of the Act.

			Seller to immediately collect this information. (c) Additionally, the obligation to file a TCS return (obligation of the Seller) precedes the date by which the Buyer has to file TDS return and furnish the TDS certificates thereafter. Therefore, the above reporting in Column 680 to 681C in the revised Form 27EQ creates practical challenges in collating the details since tracking and mapping the transactions with challans specifically where the volume of transactions are high, is impossible to comply with.	

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Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
11	Difficulty in obtaining refunds from Income Tax Department	There are various practical difficulties in obtaining refunds from the income tax department.	The following are the main areas of difficulty: a. The refund on account of excess Dividend Distribution Tax (DDT) is neither included in the order u/s 143(1) nor the same is given in the orders passed by the AO due to limitations in the Income Tax Department's online system. The refund is not granted despite multiple follow ups, grievances etc. filed by the assessee. b. On various occasions there are inordinate delays in the receipt of refund processed by CPC in the order u/s 143(1) or orders passed u/s 143(3). The income tax department does not pay interest also on such refunds if the same is less than 10% of the tax liability as per the provisions of section 244A. c. In many cases the order (say rectification order, order giving effect etc.) is passed by the jurisdictional AO however, the refund as per the order is not issued by CPC on time. In many	As per the Taxpayer Charter, the Income Tax Department is committed to provide fair, courteous, reasonable treatment to taxpayers and collect only the correct amount of tax. Hon'ble Supreme Court in the case of H.E.G. Limited and Tata Chemicals has also observed that interest is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest inasmuch as they have retained and enjoyed the money deposited. Following the charter of granting fair treatment to the tax payers and where the delay in issuing the refund is not attributable to the taxpayer, it is recommended that suitable instructions should be issued to the relevant authorities to not delay the issue of refunds and provide

			cases the CPC also does not give interest on such delayed refunds. d. Delay in issue of refunds arising out of payment of TDS demands which have later on been quashed by the appellate authorities. Currently TRACES is not allowing refund due to the assessee where outstanding demand exists in PAN and other TANs associated with the PAN of the deductor/aseessee. There is no mechanism for adjustment of refund with demand lying in PAN or other TANs associated with the PAN. These delays in issue of refunds lead to undue harassment of the assessees.	interest till the date of refund in case of any delays. Statutory timelines must be defined in the rules to address this issue. TRACES System should be upgraded and adjustment of TDS refund with demand of PAN or TANs associated with the PAN should be allowed with retrospective effect.
12	No provision to assessees to correct the particulars in challan	A challan is generated for any payment made by the assessees under the Income Tax Law. The challan has various details viz. Assessment Year, purpose of payment etc. based on which the credit is allowed to the assessees.	There is no provision for the assessee to correct the particulars of the challan, in case of any mistakes. For e.g. if an assessee makes a payment for AY 2023-24, however by mistake if the assessee mentions AY 2022-23 in the challan, the assessee will not get the credit of such challan in AY 2023-24. In such cases the only remedy is to approach the jurisdictional AO for making the correction in the system, which leads to delays.	It is recommended that there should be a provision in the system for the assessee to make corrections in the particulars of challans which have not been utilized/consumed in any other year.
13	Absence of csv upload facility in various clauses of Form 3CD e form	For voluminous data, a csv upload facility has been provided for many clauses in the e form 3CD.	There are various clauses viz. Clause 4 (indirect tax registration numbers), Clause 26 (43B), Clause 41 (demands raised and refunds issued) etc. In case of large	It is recommended that csv upload facility should be provided for all clauses in e form 3CD.

			companies, the data for these clauses may be voluminous and therefore requires csv upload facility.	
14	Notice issued u/s 133C relating to information on SFT filed for Dividend	Various notices are received seeking response in respect of information filed under SFT for the Dividend payments made by the Company.	In many cases the timeline for providing the response is only two days which results in lot of difficulties to the assessees	Sufficient time must be provided to the assessees to respond to the notices u/s 133C.
15	Difficulty on reporting portal (Insight) of the Income Tax Department	The profile on the reporting portal requires the assessee to capture the email id for receiving the communications/notices.	In case of any changes in the email id, the request for such change is not given effect to by the Income Tax Department despite multiple requests. This is a basic and important functionality which results into lot of difficulties by the assessee.	It is recommended that such requests should be processed instantly.
16	**Faceless Assessments**	It has been observed that many income-tax officers (ITOs) request detailed reconciliations for differences between turnover reported in GST returns and statutory financial statements. The differences are typically on account of the nature and framework of GST provisions and not necessarily because of income not being disclosed in financial statements. For example, these could include inter-branch stock transfers, transactions with related party without consideration, deferred revenues at the end of the financial year, which are included as part of GST returns, but will not be considered for financial statements because (i) inter-branch stock transfers are transactions within the same entity, (ii) transactions with related parties without consideration is a notional transaction for the purpose of financials and and income tax purposes, and (iii) deferred revenues accrue in	We are seeing the following challenges: - Short turnaround times for providing reconciliations and supporting documents, especially for large taxpayers with significant discrepancies. - Comprehensive documentation and supporting materials are asked for transactions of negligible significance in terms of their financial magnitude. - In some instances, even when taxpayers provide a comprehensive breakdown of their reported turnover along with supporting documentation, it has come to our attention that certain Income Tax Officers (ITOs) may struggle to fully understand the explanations given. This could be attributed to their limited familiarity with GST laws and procedures. Consequently, they may proceed to make adjustments to account for the differences	To address the abovementioned issues, we would like to suggest the following measures: **Standard GSTR Reconciliation Template** The esteemed Board might consider the issuance of internal guidelines or Frequently Asked Questions (FAQs) aimed at establishing a standard template or questionnaire for addressing the disparities between the turnover figures reported in GST returns and income-tax returns. For instance, reference could be made to the templates provided for the submission of GSTR-9C under GST regulations as a basis for creating these standardized

		a different year for financials and income tax purposes.	in reported turnover.	templates. Furthermore, these guidelines could encompass a comprehensive list of scenarios where differences in turnover seem to arise from valid reasons, thereby limiting the need for extensive scrutiny. For example, differences stemming from inter-branch transfers can be readily verified through e-invoices and the data reported in GSTR-9C. Consequently, the documentation requested by Income Tax Officers (ITOs) for such line items should be restricted to this specific information. This approach would not only offer guidance to tax officers and taxpayers but also streamline the assessment process. **Include Turnover Reconciliation in Tax Audit Report** We request that the honourable board could consider making the GST turnover reconciliation with financial statements part of the tax audit report. This would provide tax authorities with additional confidence in the reconciliation, allowing them to

				focus on other critical items during assessments. **Request Information at Initial Stages** We would respectfully suggest that the procurement of essential information pertaining to significant items be initiated at an earlier stage, in lieu of relying on show-cause notices. Such an approach would graciously provide taxpayers with the opportunity to make timely preparations and concentrate their efforts on pivotal matters when crafting responses to official communications.
17	**Arbitrary/ ad-hoc disallowances made.**	It has been observed that in significant number of cases, the ITOs make arbitrary and / or ad-hoc disallowances. Few examples of the same are provided below: - Disallowing balance sheet items (i.e. items not routed through profit and loss account) without considering their impact on income computation. - Challenging the appropriateness of legitimate business expenses, such as employee benefits, despite the comprehensive documentation provided, including invoice copies, tax information, Form 16/16A, etc. - Preventing legitimate business expenses from being accepted due to the provision of supporting documents in a different format or on a sample basis, rather than the specific format prescribed by the tax authorities, can pose challenges for taxpayers. This issue is particularly prominent among those with complex financial records who struggle to find sufficient time to compile and submit insignificant and inconsequential expense details. Moreover, this situation becomes even more taxing during peak tax filing periods,		To address the abovementioned issues, we respectfully propose the following recommendations. **Enhancing Tax Officers' Knowledge on Complex Taxation and Accounting Concepts** - As the scope of business activities expands globally, international transactions and cross-border trade have significantly increased. It is

		characterized by heightened workloads due to looming compliance deadlines. Additionally, the time frame for adhering to the tax officer's guidelines in submitting this data is relatively limited, intensifying the pressure of extracting such trivial information from the vast volume of transactions. - Disallowing expenses by alleging non-withholding of taxes on transactions where tax deductions are not required, or expenses are misunderstood by tax officers (e.g., there was an instance of a statement that a non-resident has no business connection under Section 9 of Income-tax Act being misconstrued by the tax officer; the tax officer understood it to mean there is no business relationship with customers in India and resultantly disallowing the expense under Section 37). - Amounts already voluntarily disallowed by taxpayers themselves are again disallowed by the ITOs. - Disallowing IND-AS adjustments without understanding the rationale and impact on profit and loss account and income computation.	crucial to improve tax officers' knowledge and database capabilities, particularly regarding international transactions. Tax officers handling audits involving international transactions should be well-equipped with information on international taxation, tax treaties, business connections, permanent establishments, royalties, and fees for technical services. - Ensuring tax officers are familiar with accounting concepts, accounting standards, and their impact on profit and loss accounts and income computation is vital, e.g. understanding the impact of notional accounting recorded under Ind-AS on the taxable income; impact of Accounting Standards / Ind-AS with ICDS. - This goal can be achieved through specialized training programs around certain specific tax areas , access to updated databases, and collaboration with international bodies. **Compulsory Referral to**

			Technical Unit Based on Adjustment Quantum - Currently, the Assessment Unit requests assistance from the Technical Unit only when needed during faceless proceedings. It is recommended to implement a mechanism that mandates the Assessment Unit to refer cases to the Technical Unit, particularly when significant adjustments are proposed. **Accepting Authenticity of Taxpayer Information** - The Board could issue guidelines advising ITOs to accept the genuineness of expenses in specific situations, such as when the taxpayer has no history of non-compliance or when sufficient supporting documents (e.g., 85-90% samples) are provided. **Prescribing Materiality Thresholds** - The Board could consider setting materiality thresholds, accounting for the overall tax consequences of non-submitted

			immaterial details. Insignificant values with minimal tax liability impact but requiring significant extraction efforts may be deemed immaterial, avoiding exhaustive scrutiny. **Requesting Information at Initial Stages** - As previously noted, voluminous information requests should be made early on, rather than as part of show-cause notices. This would enable taxpayers to prepare in advance and focus on critical items when responding to notices. As an alternative to seeking voluminous information, tax officer can instead look at materiality and relevance of the information requested, through risk analysis/ sensitivity analysis etc. - We also request that tax payers should be provided sufficient time for responding to show cause notices and such show cause notices should not be issued at the very end of assessment proceedings. - Implementing these measures would not only enable our tax

			officers to pinpoint genuine international transactions that result in actual revenue loss, but also strengthen India's reputation as a desirable location for global business.
18	**Adjustments based on details available on insights portal.**	The Income Tax Insight Portal is a robust online platform designed to provide comprehensive information on various financial transactions, aiming to improve accessibility, transparency, and convenience in tax compliance. - The information on the portal, used by assessing officers to frame assessments, depends on reporting done by other taxpayers. Thus, a taxpayer's assessment relies on another taxpayer's reporting. - Incorrect information on the portal can lead to ad-hoc additions without understanding the true nature of transactions, causing difficulties for taxpayers in providing details of small or unrelated transactions. - The limited timeframe for data submission increases the pressure to extract such information.	To address the aforementioned issues, we would respectfully like to suggest the following changes: It is recommended to request information on significant and relevant transactions at the beginning of the assessment process, rather than during show cause notice issuance. This allows taxpayers to prepare essential information in advance and concentrate on critical issues when responding to the notice within the limited time provided. **Additional suggestions to streamline assessment proceedings:** - Considering the challenges faced by taxpayers in various industries, we offer the following additional suggestions

			and best practices for evaluation and implementation to enhance efficiency and transparency: **Appropriate internal approvals to be obtained from Range head in case of adjustments exceeding a prescribed threshold.** Hon'ble Board could consider mandating the filed assessing officers to obtain approval of higher authorities (for eg. Range head) especially in cases where the quantum of addition proposed exceed a specified threshold. This would ensure that there is a review mechanism in place especially for additions which are likely to significantly impact both the assesses and the revenue authorities. **Taxpayer to be allowed a bare minimum time of certain specified number of days to revert with information.** Various taxpayers, especially those possessing voluminous data encounter difficulties in

			extracting and submitting such details to the tax authorities. Owing to immensely vast database, it takes higher amount of time for the taxpayer to revert to show-cause notices issued by the ITOs. Hence, it is suggested that certain minimum number of days (example 10 working days) should be specified which should be granted by the ITO to the taxpayer for furnishing the information directed to be submitted. **Prescribe conditions based on which taxpayers can seek to be assessed by Jurisdictional Assessing officer ('JAOs') instead of NFAC** Introducing faceless assessment has advantages, but manual tax assessment by JAOs can be beneficial in cases needing a personalized, localized approach or involving complex businesses. We suggest the Board consider setting conditions where taxpayers can opt for JAO assessment (e.g. large tax payers exceeding a prescribed

			revenue threshold), balancing the efficiency of faceless assessment with the need for personalized assessments in certain cases. **Recording of videoconferencing to be readily available on income-tax website** The income tax law allows for the conduct of assessment proceedings via video conferencing. While we acknowledge the efforts made in recording these video conference sessions by the service provider and sending them through a link to the email address registered on the income-tax portal, we would like to propose some improvements. Firstly, we've noticed that the links to these recordings have a limited validity period. Moreover, in certain instances, it has come to our attention that these links are not consistently received by taxpayers. Therefore, we kindly suggest that copies of these recordings be made accessible on the taxpayer's income tax e-filing

				portal. Furthermore, it would be beneficial to extend the duration during which these recording copies can be downloaded, ideally to a minimum of three years from the date of the video conferencing proceedings. Your consideration of these suggestions would greatly enhance the efficiency and transparency of the process.
19	**Reducing Compliance burden by making the process of application for Lower/NIL TDS Certificates u/s 197 of The Act - every 5 years instead of yearly**	Application for Lower/NIL TDS Certificate u/s 197 of The Act needs to be made every year and also approved by the officer every year. This creates hardship for the taxpayers and also gives rise to more interface between the taxpayers and department and consequential costs.	Application for Low/NIL TDS deduction Certificates are required to made every year by the deductees and also approved every year by the Assessing Officer. Every year the same documents need to be submitted before the AO in addition to just one more detail as to the value w.r.t. which Nil/Lower TDS deduction will be made by the deductors. This creates a big compliance burden on the deductees and also increases the Cost of compliance. Further, it results in time lag in getting the certificate and hence for part of the year, the process of lower/NIL TDS gets delayed and results in unnecessary cash flow blockage of assessees. Also, scrutiny of the application for lower/Nil TDS deduction by the department every year does not help the department too much. Rather it just creates more non-value added work for the officers.	Just like re-validation of Certificates for exemption u/s 11 is required to be made once in every 5 years, in the same manner, it is recommended that the lower/NIL TDS certificates application be required to be made every 5 years instead of every year. As regards the value w.r.t. which Nil/Lower TDS deduction will be made by the deductors for the concerned year, it is suggested that an automated process of self-declaration be made so that the assesses can declare the values per deductor online and the lower/Nil TDS certificate be issued in an automated environment for the year concerned.

20	**Tax Deduction at Source under section 194R of the Act and Section 28(iv) of Income from Business/Profession**	Section 194R has been inserted in the Income Tax Act (the Act) by Finance Act, 2022, as per which any person responsible for providing any "benefit or perquisite" to a resident, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall ensure that tax has been deducted in respect of such benefit or perquisite, at the rate of 10% of the value of such benefit or perquisite. Consequently the sum is also chargeable u/s 28(iv) for the recipient of the 'benefit/perquisite' Further clarifications were provided by Circular 12 of 2022 in the form of FAQs. As per Q.4 of the FAQs, Sales discounts, cash discount or rebates allowed to customers from the listed retail price are also benefits. However, to remove such difficulty it is clarified that no tax is required to be deducted under section 194R of the Act on sales discount, cash discount and rebates allowed to customers. As per Q.3 of the FAQs, it appears that write off of loan/receivable would	The TDS is on "Benefit/Perquisite". The words "Benefit/Perquisite" has very wide connotations and can entail any and all activities in business/profession. There can also be duplicity wherein an activity can be a financial transaction and also a "Benefit/Perquisite" and the same can lead to litigation. Therefore, the terms "Benefit" and "Perquisite" need to be defined elaborately in the Act/Rules in absence of which any and every business activity can come within the ambit of Section 194R and consequently Section 28(iv) of the Income Tax Act is applicable. Further It has also been clarified by the CBDT Circular 12 that even "Discounts" are benefits/perquisite but they are kept out of the ambit of Section 194R. Now, there are two issues – 1. Discounts are still coming under the ambit of Section 28(iv). 2. Now the field officers are of the view that "Post Sale" discount provided by means of a commercial Credit Note is not a discount and hence liable to TDS u/s 194R and consequently Section 28(iv) of the Income Tax Act is applicable. These can lead to widespread litigation which we do not believe is the intention of the Government. Further, the write off of debt happens when in spite of follow-ups and legal actions, a creditor is unable to recover the outstanding amount from its debtor. In such a situation when the debtor is unable to pay or is litigating the dues, the creditor passes entries in its Financial Statements, by writing-off its dues, to show the true value of its receivable in	1. To avoid litigation it is recommended to define the terms "Benefit" and "Perquisite" elaborately in the Act/Rules. 2. It is also recommended to suitably clarify in Circular 12 that the discounts granted would not come within the ambit Section 28(iv) 3. Parallelly it is recommended to clarify in Circular 12 that 'discounts' include 'pre-sale discount' and 'post-sale discount' 4. It should be clarified that write off of bad debts is not a benefit or perquisite within the provisions of Section 194R since the requirement to deduct TDS u/s. 194R will add to the cost of the corporate creditor who has already suffered a loss due to the write off of bad/unrealised debt. 5. Further, it is submitted that,

		constitute a benefit/perquisite in the hands of the counterparty, thereby triggering the provisions of section 194R.	compliance with Accounting and Auditing Standards. The amount of such debt written off in the books of creditor does not amount to a benefit granted by the creditor to its debtor as the claim in respect of such debt would not have been given up and may still be under litigation. If the Creditor, who has already suffered a loss on a/c of write-off of debts due from a debtor, has to deposit TDS on such write-offs u/s 194R, it will result in a double whammy since it will end up as a cost to the creditor – reason being, when the creditor is already not able to recover its dues, there is no chance of it being able to recover the TDS deposited u/s 194R. On the other hand, a delinquent debtor may enjoy a windfall if such TDS credit is reflected in its 26AS statement, since such a debtor will get credit for such TDS deposited by a stressed creditor in compliance with 194R. We do not believe that the intention of the Govt. in introducing 194R is to impose additional cost of doing business by corporate creditors.	party wise details of write off of bad debts of Rs. 1 lakh or more are already available with the Income tax Department through the Return of Income filed by corporate assessees (creditor). Additional details, if any, are required in respect of bad debts written off, can be obtained by the Dept. by widening the scope of reporting in the Return of Income, which would enable it to track such delinquent debtors and ensure such debtors offer such unpaid dues as income in terms of Section 41(1) of the Act.

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PRE-BUDGET MEMORANDUM OF REPRESENTATIONS – 2024 – 25 : PERSONAL TAX

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
1	**Taxing of Employee Stock Options ("ESOPs") in the hands of the employees**	The current Income Tax Law, provides for taxation of ESOPs as a 'perquisite' under section 17(2) of the Act, consequent to the abolition of Fringe Benefit Tax (FBT). The section states that ESOPs issued free of cost or at concessional rates will be taxed on the date of exercise on the difference between the "*fair market value*" and the amount actually paid by the employee. The "*fair market value*" is to be determined based on stipulated methods which have been separately prescribed by the CBDT.	This methodology of taxation suffers from following drawbacks: (a) It seeks to tax a notional benefit at a time when the actual gain is not realised by the employee. In fact, it is possible that the actual sale of shares could result in a loss for the employee. Since the perquisite tax paid earlier cannot be set off against the capital loss, the employee suffers a double loss, namely tax outgo and loss on sale of shares. (b) The question whether the ESOPs are granted at a concessional rate is being determined with reference to the "*fair market value*" on the date of exercise of the options. Technically, this is an incorrect approach. If the ESOPs are granted at the prevailing market price on the date of grant, such share grant should be treated as "*non concessional*". This would be in line with the guidelines issued by SEBI. Any subsequent gain accruing to the employee due to favourable market movements by the date of vesting or exercise of option cannot be treated as a "*perquisite*" granted by the employer. (c) Due to the above approach of treating ESOP as perquisites at the time of 'vesting', a peculiar situation may arise. In a situation, where employees suffer 'perquisite tax' at the time of exercise [since the market value at the time of exercise is more than the grant price], may still suffer a loss since the share price has subsequently declined at the time of sale. This is a double whammy adversely impacting the morale of the employees and goes against the concept of ESOPs as an incentive offered by employers to retain talent.	It is suggested that the taxation of ESOPs as perquisite at the time of exercise/ allotment / should be removed for the reasons explained in the Rationale column. In other words, **ESOP should NOT be taxed at the time of exercise.** In any event, any appreciation in value should only be taxed at the time of sale/ realization by the employees concerned under the head "Capital Gains". Govt. of India has recently shifted the point of incidence of taxation of ESOPs for start-ups. Such a relaxation should be extended to ESOPs issued by all employer companies.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Taxing of ESOPs in the hands of the employees***….contd. from previous page***		(d) Also, from the strictly legal angle, there are a number of differences between ordinary shares and ESOP shares. Therefore, they are not comparable. The taxation principles currently existing, result in discrimination. The market value is also strictly not applicable since there are lock-in periods applicable. A detailed note on these aspects is enclosed (**Annexure 1).** (e) Since the actual sale of shares will attract capital gains tax, if applicable, it is unnecessary to subject the employee to perquisite tax. In fact, before FBT was imposed on ESOPs, specific provisions existed in the Income Tax Act for exempting the same from perquisites and subjecting it only to capital gains tax at the time of actual sale of such ESOP shares. (f) It may be noted that ESOPs have emerged over the years as a critical, motivational and retention tool for companies in a highly competitive market for talent. It is a very effective instrument for encouraging employees to perform and excel and is a win-win proposition for the employers / shareholders on one hand and the employees on the other. Hence, a uniform & fair methodology of taxing ESOPs would go a long way in encouraging the Corporate sector in nurturing & retaining human capital.	

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
2	**Taxing of Employer's Contribution to Recognized Provident Fund and Superannuation Fund beyond Rs.7.5 lakhs u/s 17(2)(vii) of the Act and interest / income earned / accrued thereon u/s 17(2)(viia) of the Act.**	The Finance Act, 2020 had imposed tax on employees in respect of the Employer's Contribution to Recognized Provident Fund (PF) and Superannuation Fund (SAF) in excess of Rs.7.5 lacs along with the accretion by way of interest, dividend etc. pertaining to the said excess. The methodology prescribed for computing the said perquisite value is complicated and it is impossible for an employer to determine the correct perquisite value for the said contribution to PF & SAF beyond Rs.7.5 lakhs, prior to close of a financial year. At best, employers have to make an estimate for completing their salary processing and TDS obligation u/s 192 of the Act and only in the subsequent year they can determine the actual earnings attributable to the said contribution more than Rs.7.5 lakhs per annum. Added to this complexity is the expectation that income should be compounded year	It may be noted that there are various types of Superannuation Funds. In case of the new pension scheme and similar superannuation funds, the contributions made by the employer vests with the employee and he can transfer it from one employer to another. However, in other cases, contributions made by the employer to a Superannuation Fund do not accrue to the benefit of the employee till such time he retires upon superannuation, when the Fund is used to purchase annuities and/or to pay the commuted pension to the retired employee. Such contributions may or may not result in superannuation benefits to the employees since there are various conditions to be fulfilled by the employees like serving a stipulated number of years, reaching a certain age etc. Therefore, this should not be taxed as perquisite as per the ratio of decision laid down by the Hon'ble Supreme Court in **CIT vs. L W Russel [2002-TIOL-686-SC-IT]**. Further, the pension payments are subjected to tax at the time of actual receipt by the employee. Further, the methodology prescribed for determining perquisite value of income / interest earned or accrued on the said contribution over Rs.7.5 lakhs is very complicated and cannot determine the actual income prior to the close of a financial year for an employer to consider as perquisite and include the said amount for determining TDS u/s 192 of the Act. Further, the EPF interest rates are declared by the	It is, therefore, recommended that the said contribution in excess of Rs.7.5 lacs as per section 17(2)(vii) of the Act should not be taxed as perquisite. Without prejudice to the above, if the decision is to continue taxing such excess PF/SAF contribution, then at least the interest / income earned or accrued thereon should be left out of the perquisite tax net. It should be clarified that the effect of excess/short interest due to different interest rate prescribed by the government should be given effect to in the year when such change is known by the Company.

		on year and included in the perquisite value.	Government with a time lag by when the TDS would already been deducted based on provisional interest credit to the account of the employee. Further, the time limit of filing the income tax return by the employee would have already been expired. In such cases, there is no clarity on the treatment of the excess/short interest for the purpose of perquisite/TDS.	

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
3	**Leave Travel Concession/Assistance**	As per Sec. 10(5) of the Act, Leave Travel Concession/Assistance is eligible for tax relief for 2 calendar years in a block of 4 calendar years, that too, only for domestic travel expenses; foreign travel is not covered under LTA tax relief. Further, employees availing LTA will not only incur travel expenses but also accommodation expenses – currently, accommodation expenses are not covered under LTA tax relief.	Since LTA is an allowance to employees to spend quality time with their family members, which in turn will improve their physical & mental health, Govt. of India, rightfully has provided tax relief on such LTA, subject to certain conditions, which were stipulated several years back. Since the tax relief is restricted only to domestic travel costs, many employees end up offering the excess LTA received for tax. Considering the increased pressure on employees in the current day environment, it is suggested that Govt. should extend the tax relief for LTA to include within its fold (i) foreign travel and (ii) accommodation expenses.	(i) The concept of calendar year should be replaced with financial year (April – March) in line with the other provisions of the Income Tax Law. (ii) Tax relief should be granted annually and should include both domestic and foreign travel, to give a fillip to the Travel and Tourism Industry. (iii) Tax relief should be extended to cover even accommodation expenses apart from travel costs.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
4	**Rationalization of tax rate for income of dividend earned by residents**	With the abolition of Dividend Distribution Tax (DDT) by Finance Act 2020, dividend is now taxed in the hands of shareholders at applicable slab rate. The payer is required to withhold taxes from dividend prior to making payment. Accordingly, resident shareholders are liable to pay tax on the dividend income, which could be as high as 35.88% (inclusive of the maximum surcharge capped at 15%). However, in case of non- resident shareholders section 115A of the Act provides for taxation @ 20%. Further, a non - resident shareholder may also be eligible to avail benefits under a tax treaty, where tax rate may be much lower, generally in the range of 10%-15%.	Dividend are declared out of tax paid profits. Therefore, levy of further tax on dividend received by the shareholder leads to double taxation of the same income. Hence, a concessional rate of 10% (or any other suitable rate) may be considered along with a basic exemption up to Rs. 1 lakh. This would also remove disparity in the taxation of dividend, between resident individuals and non-resident shareholders. Reduction in the base rate of tax on dividends in the hands of resident shareholders will encourage citizens to invest in the Stock Markets which would lead to broader financial inclusion and provide attractive source of fund raise to promoters. This would, in turn, lead to capital investments by the private sector, which is what the Govt. of India has been nudging them to do, especially in the prevailing economic situation, where the Govt. is looking to raise/ attract funds to invest in infrastructure and employment generating initiatives.	Similar to the reduction in surcharge on dividends to 15%, even the base rate of tax on Dividend Income should be capped at 10% (instead of the current 30%) in respect of resident shareholders.

5	**Taxation for Individuals**	(a) Tax rates : Consequent to the reduction of corporate tax rates, the differential between personal and corporate tax has widened. The highest marginal rate for individuals has now gone up to 42.74% (highest slab) and 39% in the new tax regime against the normal Corporate Tax Rate of 25.17%. (b) Budget 2020 has ushered in an important change in terms of income tax regimes. There is a new tax regime that co-exists with the old one.	The high personal tax rate for individuals in India stands out as an exceptionally high rate as compared to other countries. For example, the maximum rates of personal income in Hongkong is 15%, Sri Lanka – 18%, Bangladesh – 25% & Singapore – 22%. Further, the huge gap in the tax rates as mentioned between individual and corporate tax rates is leading to several structuring decisions being adopted in favour of corporate model (for example, proprietorship business moving to company format). With two tax regimes in place, income tax for individuals have become very complicated. Further, there are different rates of taxes depending upon the source of income. In addition to this, different rates of surcharge are applicable depending upon the total income and capital gains element in the total income both under the old and new tax regime. As per press reports, **of the 6.77 crore returns filed for FY 2022-23, around 70% returns (4.65 crores) paid Zero tax – i.e. filed Nil tax returns**.	While corporate tax rates have become globally competitive, in order to ensure larger tax compliance by individuals, similar reduction in personal tax rates is recommended.

Sl. No	Section/Subject	Issue	Rationale with factual data	Recommendation
6	**Taxability issues for gratuity, leave encashment and other terminal benefits received by legal heirs of a deceased employee**	There is a lot of confusion in respect of TDS/taxability of various payments like gratuity, leave encashment and other terminal benefits received by the legal heirs of a deceased employee. The existing circulars on these subjects need to be updated based on the current Income Tax Law.	Detailed justification note is enclosed (**Annexure 2)**.	This matter needs to be clarified urgently – suggestions in this regard captured in **Annexure 2**.
7	**Perquisite tax in respect of Electric Cars**	As per Rule 3 of the Income Tax Rules., 1962, the perquisite value of a motor car provided to the employee by the employer is based on the cubic capacity of engine (whether or not exceeding 1.6 litres). However, with the advent of Electric Vehicles, the said criteria cannot be applied. This leads to confusion in the perquisite tax to be applied to the employee.	In absence of any criteria defined in the Rules in respect of Electric Vehicles, the employers may be forced to take the higher perquisite values which may result in higher perquisite taxation for the employees.	It is recommended that a suitable amendment is brought to the Rules to clarify the criteria for perquisite taxation of Electric Vehicles provided to employees by employers.

Annexure 1

ESOP shares vis-à-vis Market Shares

They are not comparable

1. ESOP shares are "issued" by the employer and "subscribed" to by the employee, whereas the shares acquired in the market ("market shares") are "transferred" from one shareholder to another. Consequently, while the market shares are goods, the ESOP shares do not become goods until they are allotted in favour of the subscribing employee.

2. It follows that the ESOP shares are not comparable with the shares that are already being traded. Therefore, it is incorrect to quantify any benefit to the employee with reference to the already trading shares or their so-called market value.

3. Even after allotment of the ESOP shares, the employee is prevented by law or the terms of the grant, from selling the shares during a lock-in period, whereas the shares bought in the market can be sold immediately without any restraint. The legal ability of disposition being one of the essential attributes of "property", the ESOP shares, unlike the market shares, are not property in the hands of the employee even after allotment.

4. When on the date of exercise, the shares are subject to a lock-in condition, they cannot be considered to be a benefit; and if it is a not a benefit, it ought not to be fictionally treated as benefit and brought under "perquisites". In ***CIT v. Infosys Technologies Ltd.,(2008) 2 SCC 272*, at page 277**, the Supreme Court held as follows:

   "During the said period, the said shares had no realisable value, hence, there was no cash inflow to the employees on account of mere exercise of options. On the date when the options were exercised, it was not possible for the employees to foresee the future market value of the shares. Therefore, in our view, the benefit, if any, which arose on the date when the option stood exercised was only a

notional benefit whose value was unascertainable. Therefore, in our view, the Department had erred in treating Rs.165 crores as perquisite value being the difference in the market value of shares on the date of exercise of option and the total amount paid by the employees consequent upon exercise of the said options."

The Court further, at page 279, held:

> *"It is important to bear in mind that if the shares allotted to the employee had no realisable sale value on the day when he exercised his option then there was no cash inflow to the employee. It was not possible for the employee to know the future value of the shares allotted to him on the day he exercises his option."*

It may be borne in mind that in the Infosys case, the Supreme Court dismissed the Government's appeal not only because the ESOP shares were not enumerated under "perquisites" in Sec. 17 (2) of the Act (which was subsequently included through an amendment), but also because it does not amount to a benefit.

5. For this reason as well, the ESOP shares and the market shares are not comparable, and the latter cannot afford any basis for determining any benefit that may have accrued to the employee on account of the ESOP shares.

Discrimination

6. When a listed company issues IPO or rights shares at a price less than the market value (or bonus shares), the difference between the issue price and the market price is not taxed. If in such a case the difference does not take the character of income, it cannot be income in the case of ESOP shares too.

7. And, if such difference (in the case of IPO/rights/bonus) does take the character of income, then taxing ESOP share alone lacks any intelligible differentia that can validly explain this classification.

8. If a distinction is suggested on the ground that in the case of ESOP shares the benefit takes the character of income forming part of 'salaries' (which is apparent from treating it as "perquisite"); which is not so in the case of market shares, it would be incorrect because such income, especially in the nature of salaries, would flow to the employee only when he realizes a gain upon the sale of the shares and not by mere allotment. Therefore, this is not a meaningful distinction.

Valuation

9. The "market value" is taken as on the date of exercise. But the ESOP shares are allotted after a lapse of time, when the market value may not be the same.

10. Even the market value on the date of allotment would not be relevant because the employee would not be able to realize that "value", being prevented from selling the ESOP shares during the lock-in period.

11. Further, the issue of ESOP shares results in expanding the capital base, and a consequent reduction in the intrinsic value of the existing shares. For this reason also, the alleged benefit flowing from ESOP shares cannot be reckoned with reference to the current value of the already existing market shares.

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Annexure 2

TAXABILITY OF GRATUITY, LEAVE ENCASHMENT AND OTHER TERMINATION BENEFITS TO THE LEGAL HEIR(S) OF A DECEASED EMPLOYEE:

(a) **Regarding Leave encashment** –

There are CBDT circulars stating that leave salary paid to the legal heirs of the deceased employee in respect of privilege leave standing to the credit of such employee at the time of his/her death is not taxable. The gist of two CBDT circulars are given below:

- Circular No. 35/1/65-IT(B), dated 5-11-1965 states if the legal representative of the deceased is to be taken to be the assessee, then the amount/proposed to be paid is certainly not due to him. It is an ex gratia payment on compassionate grounds. Thus, the payment is not in the nature of salary.

- Circular No. 309 [F. No. 200/125/79-IT(A-I)], dated 3-7-1981 states this receipt in the hands of the family is not in the nature of one from an employer to an employee. The deceased had no right or interest in this receipt. This payment is only by way of financial benefit to the family of the deceased Government servant, which would not have been due or paid had the Government servant been alive. In view thereof the amount will not be liable to income-tax.

  Based on the above 2 circulars it would seem that CBDT intends to exempt the leave encashment salary received by the legal heir of a deceased employee.

(b) **Regarding Gratuity** –

- There is a CBDT circular No. 573 dated 21.08.90 which states that a lump-sum payment made gratuitously or by way of compensation or otherwise to the widow or other legal heirs of an employee, who dies while still in active service, is not taxable as income under the Income-tax Act, 1961**. In fact, this circular will cover all other lumpsum termination benefits being paid to the legal heir of a deceased employee, who dies while still in active service.**

- Further, there are 2 case laws **Smt. L.K. Thangammal Vs. Third Income Tax Officer (1 ITD 762 – ITAT Madras**) and **First Income Tax Officer Vs. Smt. A.A.Talati (31-TTJ-245- ITAT Mumbai)** which clearly established the law [before introduction of Section 56(1)(v)] that **gratuity received by the legal heir of a deceased employee is not taxable , even after considering the provisions of section 10(10)(iii) of the Act.**

(c) However, Section 56(2) and section 2(24) of the Act have been amended with effect from AY 2005-06 to include gratuitous payments received by an Individual / HUF (any sum of money received not **exceeding** the prescribed amount without any consideration) with a view to widen the scope of Income. There are certain specific exclusion to such gratuitous receipts but such exclusions do not cover the leave encashment, gratuity or other termination benefits received by the legal heir of any deceased employee in connection with the services rendered by him.

Hence, due to the introduction of Section 56(2)(v)/(vi)/(vii)/(x) in the Act, leave encashment, gratuity and other termination benefits received by the legal heirs would now become taxable, though the above referred CBDT circulars (which were issued before the introduction of Section 56(2)(v)/(vi)/(vii)/(x) of the Act] had exempted such payments. As the earlier CBDT circulars have not been withdrawn, there is a confusion as to whether these payments to legal heirs are taxable income in their hands or not.

It is to be noted that in 2022, the Govt. inserted a proviso (XIII) under Sec 56(2)(x) of the Act to exclude from income any amount received by legal heirs from the employer of the deceased employee (without any monetary limit) and up to Rs.10 lakhs If received from any other

person(s). It is recommended that this exemption be extended to all types of payments, gratuitous or otherwise, received from the employers by the legal heirs of deceased employees while in service.

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