BCC&I
THE BENGAL CHAMBER

POST BUDGET MEMORANDUM 2021 - 22 ON DIRECT TAXES

A. Corporate Tax :

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
A.1	Changes in Timeline for reopening of Assessment u/s 149 of Income Tax Act	Budget 2021 proposes to amend Section 149 of the Act with a view to reduce compliance burden, by reducing the time-limit for re-opening of assessment to 3 years from the current 6 years from the end of the relevant assessment year. Re-opening up to 10 years is proposed to be allowed only if there is evidence of undisclosed income of Rs50 Lakhs or more for a year.	For large corporates assessees, which pay thousands of crores by way of income taxes, any information flagged against the assessee or any audit objection raised by CAG may lead to reopening of assessment. Considering the mere size of such large corporate assessees, a large number of their transactions, even though genuine and in the normal course of their business, are likely to be equal to Rs.50 lakhs or more in value. Consequently, such large corporate assessees would come under the category of assessees whose assessments could be reopened up to 10 years from the end of an assessment year, if the authority believes that their income of Rs.50 lakhs or more has escaped assessment. This would lead to major uncertainty & unstable tax position for such assessees, especially since they need to maintain their documents / accounting records, vouchers etc. for a period of 10 years as against the current 4 to 6 years under the Act. In short, while the intention of the Govt. is to reduce the compliance burden of	In view of the above, it is recommended that: (i) The maximum number of years up to which reopening of assessment can be ordered should not exceed beyond the current limit of 6 years from end of assessment year in any situation; (ii) Further, instead of prescribing a value limit [Rs.50 lakhs or more of income escaping assessment] as the basis for reopening assessments upto 10 years from the end of an assessment year, Govt. of India may prescribe a percentage of income assessed earlier for determining which assessees will need to maintain records for the 10 year period. For instance, if income escaping assessment is more than 10% of income assessed earlier, then

BCC&i THE BENGAL CHAMBER

			assesses, it would result in increasing the compliance burden and costs of genuine large corporate assessees.	reopening can be ordered up to 6 years from end of the relevant assessment year.
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A.2	Depreciation on Goodwill	The Govt. of India has amended the relevant provisions of the Income Tax Act with the aim to deny tax deduction that may be claimed by assessees by depreciating Goodwill – either generated through internal restructuring or acquired. The said denial is proposed to be effective from the financial year beginning 1st April, 2020. While most of the 2021 Budget pronouncements relating to Income Tax law are prospective in nature – i.e. effective from the financial year beginning 1st April, 2021, the aforesaid amendment has been made retrospective.	The proposed amendment would significantly impact the financial rationale basis which M&A transactions have taken place so far, making several such transactions unviable. This would be counterproductive for the economy as a whole, since the Govt. of India has articulated on several occasions of the need for consolidation in industry (e.g. Banks etc.) through restructuring / M&As that would weed out weaker corporates and strengthen stronger players in the industry. While we appreciate the intent of the Govt. to eliminate deductions, introducing retrospective provisions without grandfathering transactions that have already taken place, would make corporates that have undertaken large M&A transactions financially unviable. Moreover, under the extant Indian Accounting Standards (Ind AS), Goodwill is tested for impairment on an annual basis and the carrying value in the books of accounts could be either reduced or nullified depending upon the result of such impairment testing as prescribed under	In view of the above, it is recommended that the Govt. of India provide a 'grandfathering' option whereby all M&A transactions that have concluded till 31st March, 2021 would not be impacted by the proposed amendment. Thus, the new provisions would be applicable only from the financial year 1st April, 2021 in respect of new M&A transactions that may take place on or after that date. Such an amendment would provide sufficient notice to corporates so that they can take these new provisions on board while negotiating / concluding new M&A transactions going forward.

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			Ind AS. Thus, while the Ind AS expects corporates to annually validate and impair the value of Goodwill carried in their books, the Income Tax Act, pursuant to the proposed amendments, would insist that corporates carry such Goodwill in their tax records at constant value (like value of Land) which would be totally inconsistent.	
Sl. No.	**Section/Subject**	**Issue**	**Rationale with factual data**	**Recommendation**
A.3	TDS & TCS on transactions involving purchase and sale of goods – issues arising out s.194Q and 206c(1H) of the act	The Finance Bill 2021 has proposed to introduce a new provision for tax deduction at source (by the buyer of the goods) on purchase of goods i.e. Section 194Q of the IT Act – effective 1st July, 2021. It may be recalled that last year (w.e.f. 01.10.2020) a similar provision i.e. 206C(1H) of the IT Act was introduced for tax collection at source (by the seller of the goods) on sale of goods. Based on a conjoint reading of both the provisions, we understand that these provisions are mutually exclusive and are applicable as mentioned in **Annexure 1.**	While the responsibility for deduction / collection of tax is very clear from the above matrix, in practice it is expected that the co-existence of both these provisions may lead to utter confusion in determination of responsibility between buyer (TDS) and seller (TCS). This is particularly so when both the buyer and seller have a turnover exceeding Rs.10 crore and the buyer fails to meet his obligation to deduct Tax at Source under Section 194Q. In such a scenario, it is feared that the authorities governing the seller may hold the seller responsible for not collecting at tax at source under Section 206C(1H), even as the responsibility to do so is clearly that of the buyer. Secondly, the provisions contained in both Sec 194Q and Sec 206C(1H) do not clarify whether the consideration specified in the said sections	In view of the above reasons, it is recommended that**:** (i) Suitable amendments be introduced in Sections 194Q and 206C(1H) to enable either of the parties to take up the responsibility for deduction / collection of Tax at Source. I.e. either the buyer can undertake to deduct at tax at source under Section 194 Q or the seller can undertake to collect tax at source under Section 206C(1H), as may be mutually agreed between them. As per the present schema of the law, S.194Q has an overriding effect on S.206C(1H) in such cases. We sincerely believe that such a

			is to be determined by including or excluding GST and compensation cess. In the absence of this clarity, it is expected that the revenue officials may impose penalty on parties by interpreting as if the consideration would include GST as well.	voluntary option will enable the larger counterparty from the organised sector to take the lead and implement the provisions of TDS / TCS (as may be applicable) thus satisfying the objective of the law without any scope for any dispute with the authorities.
Sl. No.	**Section/Subject**	**Issue**	**Rationale with factual data**	**Recommendation**
	TDS & TCS on transactions involving purchase and sale of goods – issues arising out s.194Q and 206c(1H) of the act *(contd. from previous page*)	The proposed introduction of Sec. 194Q in the Act is intended to cover situations where a seller's turnover is less than 10 Crore but his receipt from sales of goods to a particular buyer exceeds Rs.50 Lakhs. In such situations, there is no liability of TCS on seller u/s 206C(1H) of the Act. To handle this situation, Govt. of India is proposing to introduce 194Q casting a similar obligation on the Buyer (Purchaser) via **TDS applicability**. A nominal rate of 0.1% for both the aforesaid provisions also suggests that garnering revenue from these	Since GST and Cess are taxes, it makes sense to exclude the same from the purview of TDS or TCS as the case may be. It should also be kept in mind that several parties in the industry operate on thin margins and even though 0.1% may appear nominal, nevertheless, it may have material impact on the working capital flow for such parties, especially small time traders. It may be noted that CBDT has taken a similar position for services (Ref: Circular No.23/2017 dated 19.07.2017), and hence there is a strong case for a similar position to be extended for goods as well.	ii) A clarification be issued to exclude the amount of GST and GST Compensation Cess from the ambit of the value on which such TDS / TCS should be applied.

		provisions, is not the objective of the Legislature. We understand that the sole objective of the said provisions is to bring a high value sale of goods (i.e. > Rs.50 lakh) under the scanner of income tax authority.		

B. **Personal Tax** :

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
B.1	Medical reimbursements for employees & retired employees for COVID treatment – both domiciliary treatment & hospitalization – currently taxable as a perquisite	(i) Under section 17(2)(viii) of the Income Tax Act, medical reimbursements received by employees from employers for domiciliary treatment of any disease is fully taxable as a perquisite in the hands of the employee with effect from 1st April 2019. (ii) Further, in terms of Rule 3A of the Income Tax Rules, medical reimbursements received by employees from employers are not taxable in respect of expenditure	The Govt. of India is fully aware of the adverse impact Covid 19 pandemic has been having on the health of its citizens and how both the State and Central Governments have been striving to provide medical care to people suffering from Covid 19. In many cases, Governments and Hospitals advised Covid 19 patients to home quarantine themselves and undergo medical treatment at home itself and not to rush to hospitals for admission mainly due to paucity of hospital infrastructure. Given this background, it is essential that the Govt. of India exempts from the ambit of 'perquisite', Covid 19 related treatment expenses incurred or may be	In view of the above, it is submitted that section 17(2)(viii) of the Income Tax Act and the Income Tax Rules 3A(1) & Rule 3A(2) be suitably amended to specifically exempt from the purview of 'perquisite' (and not subjected to income tax), reimbursement by employers to employees and retired employees (i)Domiciliary treatment expenditure incurred for treatment of Covid 19; and (ii)Hospitalization expenses incurred for treatment of Covid 19

		incurred in approved hospitals and for prescribed diseases. It is submitted that any expenditure reimbursed / borne by employers on behalf of their employees, including retired employees, towards treatment of Covid 19, either at home or in hospitals should be exempt and not taxed as a perquisite in the hands of employees / retired employees.	incurred by employees / retired employees and borne or reimbursed by the employers. In terms of Proviso (ii)(b) to Section 17(2)(viii) of the Income Tax Act read with Income Tax Rule 3A(2), hospitalization expenses paid by the employers for its employees qualify for exemption from tax only in respect of diseases specified under the said Rule, that too only in respect of hospitals approved by the Chief Commissioner of Income Tax in terms of Rule 3A(1).	– by including Covid 19 as one of the specified diseases qualifying for exemption, irrespective of hospital in which such treatment is provided – i.e. whether such hospital or Covid 19 Treatment Centre is approved by the Chief Commissioner of Income Tax or not.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Medical reimbursements for employees & retired employees for COVID treatment – both domiciliary treatment & hospitalization – taxable as a perquisite *(contd. from previous page)*		Considering the impact of the Covid 19 pandemic where only serious cases are getting admitted to hospitals and the expenses borne by the employers on behalf of their employees are significant, it is essential that the patients (i.e. employees) are not burdened with the tax implications on the said expenses, by including Covid 19 as a 'specified disease' under Rule 3A(2). Further, the said exemption should be extended even to hospitals / clinics / care centres not approved by the Chief Commissioner of Income Tax in terms of Rule 3A(1) in view of the shortage of hospital beds in established / approved hospitals. It is submitted that in several cases, Covid 19 patients get admitted in Covid treatment centres set up Central / State Governments which may not be part of the list of hospitals approved by Chief Commissioner of Income Tax in terms of Rule 3A(1) of the Income Tax Rules. Similar exemption should be extended in cases where employers bear the Covid 19 related hospitalization expenses of its retired employees.	(iii)If the Government is of the view that such an exemption cannot be open-ended in view of its policy intent to eliminate income tax exemptions/deductions, considering the peculiar nature of this pandemic, such an exemption may be granted for a specified period – say till 31st March 2022.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
B.2	Perquisite valuation under section 17(2) of the income tax act, 1961 in respect of employee contribution to PF in excess of Rs.2.50 lakhs	In the Finance Bill of 2021, the Govt. of India has proposed to insert a proviso to Section 10(11) of the Income Tax Act whereby, any income by way of interest accrued in the account of a person to the extent it relates to the aggregate amount of contribution made by that person towards Provident Fund (PF) in excess of Rs.2.50 lakhs to be computed in such manner as may be prescribed. In short, any interest accrued on the contribution to PF made by an employee in excess of Rs.2.50 lakhs in a year shall be subjected to income tax.	Any employee earning a basic salary of Rs.1.73 lakhs or above per month (i.e. Rs.20.83 lakhs per year) would be making PF contribution of above Rs.2.50 lakhs per year. So, any interest earned by them on their PF contribution in excess of Rs.2.50 lakhs would be subjected to tax. It is submitted that contribution to PF is a statutory requirement – currently, 12% of the basic salary of an employee is deducted towards PF. While the Memorandum explaining the provisions proposed of the Finance Bill and the interviews of the Finance Department officials do throw out the rationale behind this move of the Govt., it is pertinent to note the following aspects: (i)The threshold proposed for taxing interest earning on PF is very low – i.e. any employee having basic salary of Rs.1.73 lakhs or above will get taxed. Whereas, the logic outlined by the Govt. officials was about people having Rs.80 crores or more in their PF account.	It is, therefore, recommended that: (i)The Govt. of India exclude from the purview of 'perquisite tax' all PF contributions up to the statutory limit stipulated under Employees Provident Fund & Miscellaneous Provisions Act, 1952, so that genuine/statutory contributions remain out of the tax ambit. Consequently, all voluntary contributions to PF could be brought under the tax net.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Perquisite valuation under section 17(2) of the income tax act, 1961 in respect of employee contribution to PF in excess of Rs.2.50 lakhs *(contd. from previous page)*		(ii)Govt. intent is to tax people in high salary brackets – i.e. with basic salary in crores per month and also to tax people who contribute heftily to PF through voluntary contribution (and thereby enjoy tax-free interest income). (iii)While the above move may discourage people from trying to leverage tax free income by contributing more amounts voluntarily to PF, most of the people in employment cannot take any such steps since they will need to contribute to PF statutorily @ 12%. Even such genuine cases would come under the tax net if such statutory contribution itself cross Rs.2.50 lakhs per year. (iv)As per Employees Provident Funds Act, 1952 the purpose of instituting compulsory contribution from both employers and employees is to provide social security to the employees on superannuation. In case, the interest accrued on contribution is taxed at the maximum marginal rates as proposed now (which can go up to 42.75%), then the annual accretion would generate negative real interest to the employees if one considers the average inflation rate in the economy. Consequently,	iii)The above exemption sought for contributions to PF up to statutory limit – i.e. 12% of Basic Salary + Dearness Allowance, may not be granted where an employee's Salary considered for determining PF contribution exceeds a threshold, say Rs.1 crore per month. Such a provision would align with the rationale articulated by the Govt. officials, which is to bring under the tax net high income earning individuals who enjoy tax free income through PF contributions.

			the fundamental rationale for bringing PF contribution under the statutory ambit might stand defeated.	
Sl. No.	**Section/Subject**	**Issue**	**Rationale with factual data**	**Recommendation**
B.3	Perquisite valuation under section 17(2) of the income tax act, 1961 in respect of Employer contribution to PF, Pension etc.	As per Section 17(2) of the Income Tax Act, 1961, "Perquisite" includes: *"…..* *(vii) the amount or the aggregate of amounts of any contribution made to the account of the assessee by the employer—* *(a) in a recognised provident fund;* *(b) in the scheme referred to in sub-section (1) of section 80CCD; and* *(c) in an approved superannuation fund,* *to the extent* ***it exceeds seven lakh and fifty thousand rupees*** *in a previous year;* *(viia) the annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or*	It may be noted that while the above two clauses were introduced in the Income Tax Act by the Finance Act, 2020 with effect from the financial year 1st April 2020, CBDT has not come out with the manner in which the computation u/s 17(2)(viia) is to be done by employers while determining the tax liability of their employees and deduct tax appropriately. In terms of Section 194 and Section 7 of the Act read with the rules laid down under Part A of Schedule IV tothe Act, such earnings would not qualify as income in the hands of employees unless they receive the said income. With the financial year 2020-21 ending shortly, the absence of guidance from CBDT constrains the employers from implementing the said provisions introduced in the Act effective 1st April, 2020.	The Govt. of India / CBDT should urgently come out with a circular how employers are to determine the perquisite value of the item covered u/s 17(2)(viia), so that the employers can comply with the said provision and ensure appropriate tax is deducted before the financial year ended 31st March 2021.

		scheme referred to in sub-clause (vii)		
Sl. No.	**Section/Subject**	**Issue**	**Rationale with factual data**	**Recommendation**
	Perquisite valuation under section 17(2) of the income tax act, 1961 in respect of Employer contribution to PF, Pension etc. *(contd. from previous page)*	*to the extent it relates to the contribution referred to in the said sub-clause which is included in total income under the said sub-clause in any previous year computed in such manner as may be prescribed…"*		
B.4	Perquisite valuation under section 17(2) of the income tax act, 1961 in respect of company owned accommodation provided to employees	As per Section 17(2) of the Income Tax Act, 1961, "Perquisite" includes value of rent-free accommodation provided to an assessee by his employer. The methodology for computing the perquisite value as stipulated in the Act is enclosed as **Annexure 2.**	The aforementioned method of determination of perquisite value in respect of company owned accommodation suffers from various inequities, as summarised below: 1)Firstly, the perquisite value and the consequent tax implication on a company owned accommodation is significantly more than on an accommodation taken on lease by an Employer. This could be best illustrated by way of an example as described in **Annexure 3.**	1)It is suggested that in case of company owned accommodation, the concept of "fair rental value" be introduced to ensure that right amount of perquisite is determined for tax purposes. "*Fair rental value*" for this purpose should be defined as the rent which a similar accommodation would realize in the same locality; where fair rental value is not ascertainable, then the municipal valuation should be

				considered for determining the perquisite value.
Sl. No.	**Section/Subject**	**Issue**	**Rationale with factual data**	**Recommendation**
	Perquisite valuation under section 17(2) of the income tax act, 1961 in respect of company owned accommodation provided to employees *(contd. from previous page)*		2)Secondly, when the salary of employees increases (considering inflation, performance of the company, employee etc.), in respect of the employee staying in the same company owned flat, the perquisite value and related tax implication will be much more as compared to the other employee staying in the accommodation taken on lease by the Employer – see illustration below**(Annexure 4).** 3)Further, for a similar company owned accommodation, employees with different salaries will have different perquisite value – Ref **Annexure 5**. 4)It is to be noted that, irrespective of the size or quality of company owned accommodation, the perquisite value and the consequent tax implication on the employees would be significantly different since under the present law, it is getting determined as a percentage of salary, without any correlation to the fair rental value of the said accommodation.	2)Towards this, Sections 17(2)(a)(i) and 17(2)(c)(i) be deleted. Instead, Section 17(2)(a)(ii) and 17(2)(c)(ii) be amended appropriately to include company owned accommodation as well such that the perquisite valuation of such accommodation be based on the fair rental payable for such accommodation; where fair rental is not determinable, then the perquisite valuation of such accommodation be determined based on the municipal valuation – as is being followed for determining Income from House Property under Section 23(1) of the Income Tax Act.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Perquisite valuation under section 17(2) of the income tax act, 1961 in respect of company owned accommodation provided to employees. (*contd. from previous page)*		**Implications :** 1)Retention of skilled manpower is a critical requirement for a company to be successful on a sustainable basis. One of the motivating tools adopted by corporates is to provide a good quality residential accommodation (typically owned & maintained by corporates) and related facilities to its employees & their families. However, the perquisite valuation methodology currently prescribed under the Income Tax Act acts as a deterrent to employees from willing to accept and stay in company owned accommodation. 2)The aforesaid inequitable treatment also discourages corporates from investing in infrastructure, including residential projects, across the country. **At a time when the economy needs investments**, **it is submitted that the Govt. amends the perquisite valuation methodology for company owned accommodation such that corporates are incentivized to invest in the real estate sector** (**which is also a high employment intensive sector of the economy).**	

Anneuxre1

Buyer's TO in last FY	**Seller's TO in last FY**	**Consideration paid/received during current FY**	**Applicable Provision**	**Rate of TDS/TCS**	**Whose Responsibility**
> Rs.10 crore	Any	> Rs.50 lakh	194Q	0.1%	Buyer
<Rs. 10 crore	> Rs.10 crore	> Rs.50 lakh	206C(1H)	0.1%	Seller

Annexure 2

Basis of Valuation of Perquisite - Rent Free Accommodation

Population of city	Where Accommodation is owned by Employer	Where Accommodation is taken on lease or rent by Employer
Exceeding 25 lakhs	15% of Salary	Lease rent paid or payable by Employer (or) 15% of Salary whichever is lower
Exceeding 10 lakhs but below 25 lakhs	10% of Salary	
Any Other	7.5% of Salary	
Note: If Furniture & Fixtures are provided by Employer, then 10% of the original cost of such Furniture & Fixtures (if owned by Employer) or actual hire charges to be considered as Perquisite value		

'**Salary**' for the above purpose includes: Pay, Allowances, Bonus or Commission or any other monetary payment but does not include DA, Employer's contribution to PF, allowances exempt from tax and value of perquisites.

Anneuxre3

Let us assume that an Employer owns a Flat in a residential complex in Mumbai which is offered to one of its employees (say 'X'); let us also assume, the Employer takes on lease another but a similar flat in the same residential complex at a rental of, say, Rs.25,000/- per month and offers it to one other employee (say 'Y'). Then, the perquisite value of the accommodation provided to X and Y would be computed as below:

Year 1 Rs Lakhs	X	Y
Annual Salary	50.00	50.00
Annual Lease Rent	-	3.00
Methodology for computing Perquisite value	15% of Salary	Lease Rent or 15% of Salary, whichever is lower
Pequisite Value of Rent-free Accommodation	7.50	3.00
Income Tax @ 34.32%*	2.57	1.03

Salary includes Pay, Allowances, Bonus, Commission; Tax: 30% + 10% SC + 4% Edu Cess

It could be observed from the above table that the tax impact on the X staying in a company owned accommodation is much higher than Y staying on a company leased accommodation.

Anneuxre4

Year 5 Rs Lakhs	X	Y
Annual Salary (increased with time)	75.00	75.00
Annual Lease Rent	-	3.45
Methodology for computing Perquisite value	15% of Salary	Lease Rent or 15% of Salary, whichever is lower
Pequisite Value of Rent-free Accommodation	11.25	3.45
Income Tax @ 34.32%*	3.86	1.18

Salary includes Pay, Allowances, Bonus, Commission; Tax: 30% + 10% SC + 4% Edu Cess

As can be seen above, with passage of time where the salary of employees is likely to increase, the tax implication on X staying in company owned accommodation will be significantly adverse despite X continuing to stay in the same flat. Whereas in case of Y where the accommodation is taken on lease by the Employer, then perquisite value is fair and stable since it is linked to the lease rental value.

Annexure 5

To illustrate, assuming the Employer owns 2 similar flats in a residential complex offered to two of its employees, the tax implication would be adverse for the employee whose salary is more than the other one – i.e. Rs.3.35 lakhs vs Rs.2.47 lakhs

Rs Lakhs

Year 1	X	Y
Annual Salary	65.00	50.00
Pequisite Value of Rent-free Accommodation	9.75	7.50
Income Tax @ 34.32%	3.35	2.57

Salary includes Pay, Allowances, Bonus, Commission