BCC&I
THE BENGAL CHAMBER

PRE-BUDGET MEMORANDUM OF REPRESENTATIONS 2023 – 2024 : CORPORATE TAXES

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
1	**Disallowance of Expenditure in case payment is not made to Creditors within 180 Days**	For the MSMEs there is a big issue of delay in receipt of payments. While the Customers pay the MSMEs after long periods, yet they get the deduction in the year in which provision for the invoice is made. This leads to a big hardship for MSMEs who are the backbone of Industry in India. Yet, due to business reasons they cannot stand up against the customers too individually.	2nd Provision to Section 16(4) of The CGST Act 2017 already has a provision whereby in case the payment is not made to suppliers within 180 days, the ITC taken by the recipients needs to be reversed. This acts as a deterrent for customers delaying payments more than 180 days. In the same line, even if The Income Tax Act can be suitably be amended to disallow an expenditure in case a payment is not made to suppliers within 180 days of the invoice, then it will act as further deterrent for customers for delaying the payments for more than 180 days. It will help the MSMEs further.	Necessary amendments should be made in the Act/Rules to incorporate the disallowance of the expenditure in case a payment is not made to suppliers within 180 days of the invoice; it will act as a deterrent to delay payments and will help the MSMEs also. Further it can help in boosting tax revenues too.
2	**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	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

			the department every year does not help the department too much. Rather it just creates more non-value added work for the officers.	assesses can declare the values per deductor online and the lower/Nil TDS certificate be issued in an automated environment for the year concerned.
3	**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	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	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, party wise details of write off of bad debts

		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 constitute a benefit/perquisite in the hands of the counterparty, thereby triggering the provisions of section 194R.	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 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.	of Re 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.

4	**Tax Deduction at Source @ 1% under section 194O of the Act**	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 Sec 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 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 disincentivize such efforts. Further, farmers may not have PANs which imply TDS will be at a higher rate - Refer **Annexure 1** for details.	It is humbly submitted that Sec. 194O should be made NOT applicable to digital platforms operated for the benefit of farmers / FPOs - Refer **Annexure 1** for details.
5	**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	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 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 transform the country from one dominated by foreign brands to a	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**

		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 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.	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.	**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 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.
6	**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. 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	The requirement of withholding tax on dividend paid to the shareholders has resulted in a huge compliance burden on the Companies and intermediaries / consultants are having a field day offering compliance of TDS on dividends as a service. 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.	Govt. of India should look into this issue and provide for a simplified process, including the possibility of prescribing a uniform rate of say 10% for payments of dividends by listed companies to all beneficiaries, whether residents or non-residents. Relaxations must be provided in

		country. There are various classes of shareholders (individuals, trusts, Government companies, FPIs, Mutual funds, insurance companies, NRIs etc.) each having different withholding tax implications. A company needs to analyze 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'.		filing of Form 15CA/CBs particularly in cases where full tax has been deducted from dividend payout to non-residents.
7	**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 also taxed in India, as per the prescribed guidelines. As per Rule 128, for	Revenue Units of foreign countries follow their own time lines for determining the tax liability and recovery of taxes in their jurisdiction. Further, in some cases, where the tax is withheld by foreign customers, there may be delays in receipt	Necessary amendments should be made in the Act/Rules to incorporate the process of claiming the tax credit, where the foreign tax credit certificates are

		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.	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.	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.
8	**Significant Economic Presence [SEP]**	Historically. taxability of non-residents depended on their physical presence in India - also referred as 'Permanent Establishment'.	The wordings in the SEP provisions [i.e. Explanation 2A to Sec 9] are wide enough to include in its scope even non-digital transactions like import of goods etc. where the non-	It is recommended that :

		However, Govt. of India 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 Crores 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.**	resident seller is neither present physically nor digitally in India.	1) Non-digital transactions such as import of 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.

9	**Disallowance of expenses relating to exempt income under section 14A of the Act**	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 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 4-5% 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.	The stipulation regarding the disallowance of 1% of the annual average of the monthly averages of the value of investment under Rule 8D, is 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.	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. 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 **disallowance be restricted to 0.5% of the exempt income** instead of 1% of average value of investments.
10	**Retirement Funds**	(i) As per rule 87 of the Income Tax Rules, the employer is permitted to make a total contribution not exceeding 27% of the employee's salary in respect of Provident	(i) In the context of the current rates of interest and the high cost of annuities and considering that pensions are in any case taxable in	(i) It is recommended that the ceiling of contribution as per Schedule IV of Part A Rule 6 of the Income Tax Act should be abolished. As an alternative, if the Government still

		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.	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.	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.
11	**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). Further the requirement covers only whole-time	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 apparel and leather industry, employees employed for over 150 days (instead of 240 days)

		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.		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.
12	**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. However, Assessing Officers do not allow deduction for such expenditure claimed by a company on the ground that it is in the	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. These are just like payments made under any operating lease to utilize 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	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.

		nature of purchase of land, which is capital in nature.	expenses	
13	**<u>Requirement to issue and maintain tax deducted at source ('TDS') and Tax collected ('TCS') certificates:</u>**	TDS/TCS certificates are required to be issued under the Income-tax Act, 1961 ('ITA') by the payer within prescribed timelines and are to be maintained by payees for claiming the corresponding tax credit. However, in practice, tax authorities in a number of cases only rely on Form 26AS for granting tax credit during tax assessments.	**Maintaining of Forms 16A/ Form 27Ds and subsequent reconciliation of these with Form 26AS for claiming TDS/TCS credit increases the compliance time and efforts. This is contrary to the motive of ease in compliance.** This is for the following reasons: a) For maintaining Forms 16A/ Form 27D - The taxpayer, being a deductor/collector, is required to incur additional costs of setting up a sophisticated system to issue, process and track the certificates sent (the certificates essentially capture the information submitted in the TDS/TCS return which is also already reflected in the Form 26AS of the payee). - A taxpayer, as a deductee/collectee, is required to keep track of TDS /TCS deductions, certificate collections, etc and undertake manual reconciliations in respect of the certificates collected from various deductors/ collectors. Further, in case of any revisions, one has to keep track of collecting revised Form 16A/27D. - Each taxpayer has to undertake both the above for its payments and its receipts. In both cases above, owing to large volume of certificates to be issued or high number of transactions to be covered in a particular certificate, the income tax website /	To substantially reduce compliance costs and efforts, thus promoting ease of doing business, the following recommendations are made: a) Consider removing the requirement for payers to issue TDS/TCS certificates and consider prescribing Form 26AS (generated through secure safeguards to ensure payee information is not allowed to be tampered with) as the basis for tax authorities to grant tax credit. b) Consider the requirement of issuing TDS/TCS certificates only to persons not holding a PAN (especially non-residents for them to be able to claim credit in their country of residence).

			functionality at times is unable to generate the certificates or prompts an error, or in some cases the taxpayer's own system may not support such large volumes unless the system is highly advanced and sophisticated – leading to enormous time and effort going into this process. b) As the reassessment time limit is of 3 or 10 years, taxpayers are required to maintain physical copies of these TDS certificates for a long time. The certificate contains confidential data (like PAN, TAN transactional details etc.) which also raises security and privacy concerns. c) During assessment proceedings it is difficult to track and retrieve any specific TDS certificate of the previous year owing to the large volume of certificates. Reconciliation of the TDS credits as per the books of accounts, Form 16A and Form 26AS is a tedious effort which increases the procedural burden and leads to imputation of differential revenue to tax. SMEs face the brunt of this excessive maintenance and storage of information of the TDS certificates as it adds to their cost of operations, which impacts profitability.	
14	**Linking of PAN and TAN:**	As part of annual book closure activities taxpayers perform reconciliation of TDS credit balances, between their books and Form 26AS. For the payee, Form 26AS captures TAN of	**Reconciliation of TDS credits between books of accounts and Form 26AS is an onerous manual process which increases the compliance time and efforts and is contrary to the motive of ease in compliance.** This is for the following reasons: a) Mapping names as appearing in the books of accounts	To enable seamless reconciliation exercise, the following recommendations are made: a) Consider including PAN along with TAN in Form 26AS and TDS certificate.

		the payer while in the payee's books of accounts, payer's PAN is tracked. Unlike GSTIN which subsumes PAN as part of the GSTIN characters, PAN and TAN have separate and distinct characters.	and Form 26AS often provides incorrect reconciliation specially in proprietorship businesses where business name has variations from the name in the PAN or TAN database. Due to voluminous data in case of each taxpayer, this exercise of reconciliation requires significant time and resources. b) Difficulty in identifying the payer due to errors either in the payer's name or due to change in name.	b) Consider linking PAN and TAN, similar to the linking of PAN and Aadhar. Consider enabling an API mechanism to retrieve TAN of the taxpayer by using a PAN input by having a trusted common identifier.
15	**Interest on non-deduction of TDS:**	Delay in deduction of TDS by even a day in the same month attracts interest at 1 percent under section 201 of the ITA, even when the TDS liability is remitted on time as per the due date.	**Penalty in the form of interest of 1 percent for even a day's delay in TDS booking when the TDS liability is remitted on time increases the cost of compliance and is contrary to the motive of ease of doing business in India.** • This is for the reason that SMEs face genuine administrative delays in recording TDS related deductions in their books of accounts due to manual or system issues due to which the automated TDS entries are recorded sometimes subsequent to the day of the expense-related journal entry.	In view of the issue of the interest applicable in case of genuine cases, it is recommended that no interest should be levied in cases where while TDS may have been deducted late but otherwise deposited as per the due date.

Annexure 1

Implications of TDS u/s 194O 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 sumamrised 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:

In view of the above practical difficulties 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.

****