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THE BENGAL CHAMBER

PRE-BUDGET MEMORANDUM OF REPRESENTATIONS 2022 – 2023 : CORPORATE TAXES

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
1	Corporate Social Responsibility Costs – To be allowed as a deduction u/s 37 of the Act	Section 135 of the Companies Act 2013 and The Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules) as notified make CSR expenditure a statutory requirement for all practical purposes (as per the spirit of the law), in respect of companies falling under the ambit of such regulations. In this connection, it may also be noted that the CSR expenditure under law is in effect calibrated to the average Pre-tax profits (as computed under Section 198 of the Companies Act 2013, akin to managerial remuneration) earned during the preceding three years and is therefore a charge on profits (just like managerial remuneration) and not an appropriation thereof (which is a shareholder prerogative). In the Finance (No.2) Act, 2014 it was mentioned that under section 37(1) Explanation 2, all CSR expenditure shall not be deemed to be an expenditure for the purpose of business on the rationale that it is an application of income.	It may be noted that every expenditure represents application of income and not an appropriation, if the charge/debit is made before determination of the PBT. In that context, CSR is an item of expenditure similar to any other standard item like rent, repairs and insurance. Moreover, such expenditure which is to be incurred under the new Companies Act and determined @2% of the pre-tax profits, is automatically an expenditure for business purpose even though it may not be incurred in the normal course of business. Also, statutorily sharing the burden with the Government *"in providing social services"* under law cannot be termed as getting subsidy from the Government through the said deduction since it is a statutory expenditure and is not in the nature of any tax or dividend. In fact, the alternative argument of it not being an expenditure for tax computation purposes is itself not sustainable since it then becomes a "tax" which cannot be introduced under the Companies Act. The industry therefore expects that such CSR expenditure would be allowed as a deduction under the Income Tax Act and Rules and all the more so, as certain elements of eligible CSR expenditure such as those covered under sections 30 to 36 are fully deductible even under the present tax laws, as explained in the Memorandum.	It is therefore recommended that the amendment made under section 37(1), Explanation 2 be dropped and the Income Tax Act expressly stipulate that all expenditure incurred by companies in accordance with Section 135 of the Companies Act 2013 and the CSR Rules be allowed as a deduction under law. Also, specific provision should be made in respect of allow ability of CSR expenditure, even in respect of items covered under sections35(1)(ii), and 80Gof the Act (including

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			In fact, the High Level Committee on CSR formed by the Ministry of Corporate Affairs had observed that certain items of CSR are allowable under the Income Tax Act, whereas other items are not allowable and this has resulted in inconsistencies and lack of uniformity in the treatment for tax purposes and this has to be corrected.	contributions to the PM Cares Fund). This will bring about fairness and uniformity in tax treatment and eliminate potential disputes & litigation that would otherwise arise in this regard.
2	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 household 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	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. 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	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**

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		Indian market are the property of foreign enterprises – *A list of such foreign brands across categories operating in India is enclosed as* ***Annexure 1***. 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.	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. In fact, this can transform the country from one dominated by foreign brands to a player of substance in the global arena.	**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.**.

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3	"Make in India": Encouraging Innovation to Deliver Corporate Initiatives for larger societal value creation	In line with the Hon'ble Prime Minister's call for qualitative and sustainable industrial growth in the form of "Make in India : Zero Defect and Zero Effect", there is a strong need to encourage and incentivise the immense transformational capacity of corporates in innovating business models that can synergistically deliver economic and social value simultaneously.	Sustainability in Business Development in its truest sense can only take place when economic growth fosters social equity. Growth must translate into the creation of sustainable livelihoods and replenishment of scarce environmental resources. Limits to future growth will be defined more by vulnerabilities flowing from social inequities, environmental degradation, and climate change than by any other economic factor. Government can support the development of a Responsible Business "Trustmark" Rating System that could be used to convey to the consumer a company's environmental and social performance. An enterprise could be awarded credits by way of "Trustmark Rating", based on an objective evaluation of its triple bottom line performance. An accumulation of such credits could earn the enterprise Trustmark ratings on a progressive scale. These Ratings could then be displayed on products and services of the company to help consumers make an informed choice. Banks and Financial Institutions could also factor in the Trustmark Ratings in their lending operations providing benefits to more responsible corporations. Going forward,	Government must consider the provision of a differentiated and preferential set of incentives to companies that demonstrate leadership in sustainability performance. Companies with high "Trustmark" ratings should be provided with incentives like priority fast track clearances, purchase preferences, lower levies of central excise duty for manufacture of "green", eco-friendly products, and **weighted deduction for the expenditure under the Income Tax Law, even if they have opted for concessional tax regime u/s 115BAA or 115BAB**of the Act. This would spur powerful market drivers that will incentivise

			it may even be possible to trade in these "Trustmarks", if a system similar to carbon credits or energy efficiency certificates can be developed so that organisations with surplus credits are able to monetize their efforts.	innovation for larger positive societal impact.

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4	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. It may be noted that the average yield from Tax-free Bonds is around 4-5% in today's market condition. If 1% of the annual average is applied then the disallowance of expense under this section would be 12% of Investment. This would practically tax all the income earned from such tax free Bonds, which is not the intent of the Govt.	The stipulation regarding the disallowance of 1% 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 of the disallowance exceeding the total exempt income. 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. The system of disallowance under Rule 8D does not distinguish between an assessee investing from own funds and assessee borrowing money for investments, 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 should be restricted to the following : Expenditure directly attributable to earning of exempt income be disallowed. Interest expenditure to be disallowed in line with the existing law based on the proportion of average value investments to total assets after excluding the interest expenditure specifically related to the business of the company. The disallowance for administrative expenditure should be made by estimating the time of the personnel and resources involved for undertaking the activities which result in earning of the exempt income. The aforesaid estimation to 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%.

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5	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).Incidentally, hotel industry is also seasonal and similar benefit should be extended to hotel industry as well. Further the requirement spells out 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	The section should be corrected and improved 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 3 years All whole time retainers and contractual employees who are employed with the company and who fall under the above salary ceiling 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 days of engagement exceed 150 days.

		apart from contribution to PF & ESI in respect of contractual employees. In such cases, manpower supplier merely enjoys the profit margin as well as the tax deduction on the salary paid under this section.		

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	Deduction in respect of employment of new employees – 80JJAA…***contd. from previous page***	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.		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 should be considered for the purpose of determining the total number of employees in the previous year in which he is employed.

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6	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees	a) As per the Guidance Note issued by Institute of Chartered Accountants of India ('ICAI'), SEBI Guidelines and the Indian Accounting Standards (IndAS), the main objective of issuing shares to employees of an entity under an Employee Stock Option Plan (ESOP), is to remunerate and incentivise the employees for their services. The SEBI Guidelines and IndAS require a company to recognise the charge incurred for issue of ESOPs as an employee compensation in the Financial Statements/Books of Account of the Company over the vesting period. For computing the related employee cost, IndAS mandates companies to adopt the Fair Value valuation of the share options granted to the employees unless that fair value cannot be estimated reliably. Thus, under the IndAS regime, even if the companies have granted the options at the prevailing market prices on the	a) The issue with respect to deductibility of employee cost incurred for grant of stock options to employee has been a matter of debate before the Courts/Tribunal. The Income Tax Authorities are not allowing such employee compensation expense as an allowable business expenditure u/s 37 of the Act, inspite of the various judicial precedents (detailed below), to the contrary. b) Further, since the Income tax Law has not expressly specified, there is also a debate on the amount to be allowed as employee compensation expense, the method used for calculating the value of the stock options granted and the year in which the cost should be allowed etc. c) It may kindly be noted that deduction for ESOP to employers is provided even by the developed nations: United States of America Sec. 83(h) of Internal Revenue Code (IRC) allows the companies deduction for ESOP Expenditure equal to the amount offered to tax by employee in the year it is offered to tax by the employees.	To put an end to the litigations, it is recommended that the CBDT comes out with clear guidelines on the allowability, calculation and treatment of these employee compensation expenditure/cost incurred on account of issue of shares options to employees under ESOP for income tax purposes. Under the Ind AS, companies are required to account for such employee cost for grant of ESOPs under fair value method, which is a fair method used internationally to account for such cost. Hence, CBDT should also allow companies to claim

		date of grant, they have to do a fair valuation of the options granted to the employees using option pricing models (which essentially calculates the difference between the exercise/grant price and the expected price of the	United Kingdom Part 12, Chapter 2 of the Corporation Tax Act, 2009 allows companies deduction for ESOP expenditure as excess of market value of shares over the amount recovered by the employer in the period when the shares are acquired.	deduction for the employee remuneration cost on the basis of fair value method, to ensure least complication and hassles in the calculations and to avoid unnecessary litigation and dispute on this subject.

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	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees…***contd. from previous page***	underlying shares on the date of vesting) and recognise the charge in the profit and loss account over the entire vesting period. (b)Such share-based payments to employees is construed, both by the employees and the company, as a part of package of the remuneration. (c)It is pertinent to note that u/s 17(2)(vi) of the Act, the difference between the fair market value of the shares allotted to employees under the ESOP scheme and the exercise price, is treated as a perquisite – i.e. as part of salary given to the employees, on which tax is payable by the employees. Hence, income tax itself cognizes the difference –i.e., value of the share options granted to the employees as part of employee remuneration, taxable in the hands of employees.	**Reference to the decisions of the Supreme Court in the case of Bharat Earth Movers vs CIT [245 ITR 428] and Rotork Controls India (P) Ltd [314 ITR 62] also indicate that a definite business liability arises in an accounting year which qualifies for deduction even though the liability may have to be quantified and discharged at a future date.** Thus, following the decision of the Supreme Court, the employee cost incurred during the vesting period on account of fair valuation of the share options granted to the employees during the year, cannot be treated as a contingent liability and hence should be allowed as a deduction u/s 37 of the Act, as and when it accrues over the vesting period, as per the Guidelines of SEBI and Accounting Standards and Principles. **Further, the Supreme Court in the case of Woodward Governor India (P) Limited [312 ITR 254] had also held that the term 'expenditure' in certain circumstances can also encompass 'loss' even though no amount is actually paid out.** Following the rationale of this Apex Court decision, the employee cost accruing on account of issue of ESOPs should be treated as an allowable expenditure u/s 37(1) of the Act, since by undertaking to make share-based payments, the company does not pay anything to its employees but incurs the obligation to issue shares at the pre-determined exercise price at a future date(s), in lieu of their services.	

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	Tax deduction for the employee remuneration cost incurred due to grant of employee stock options (ESOP) to the employees…***contd. from previous page***	(d)Thus, it is evident that the legislature contemplates ESOP benefit as an employee cost i.e. a consideration for employment, which entails giving the employees the shares of the company at a particular exercise price. Therefore, cost of ESOPs should be treated as an allowable business expenditure u/s 37 of the Income Tax Act. (e)**ESOP cost is an ascertained liability and not a contingent liability, since the employer incurs obligation to compensate the employees over the vesting period, notwithstanding the fact that the exact amount of related cost is quantified only at the time of the exercising the options**. A company becomes liable to issue shares at the time of the exercise of option and it is in lieu of the employee compensation, liability which it incurred over the vesting period, to obtain their services. Therefore, the company incurs the liability only during the vesting period, which is neither incurred at the stage	Reliance can be placed on the following decisions which have upheld the allowability of the employee cost incurred on issue of ESOPs to employees as a business deduction during the vesting period- – *Special Bench , ITAT Bangalore, in the case of Biocon Limited v DCIT –[TS 322] also affirmed by Karnataka High Court* – *Madras High Court in the case of CIT vs PVP Ventures Limited [211 Taxman 554]* – *Chennai Tribunal in the case of S.S.I. Ltd vs DCIT [85 TTJ 1049] [211 Taxman 554]* – *-Chandigarh Tribunal in the case of ACIT vs Spray Engineering Devices Limited [53 SOT 70]* Further, where a company is a holding or parent entity with several group entities, it may offer ESOPs to identified employees of such group entities. **SEBI has in August 2021, allowed companies to provide share-based employee benefits to employees, who are working for any of its group companies, including its subsidiary or associate**.	ESOP cost charged by the parent company to the group companies should also be allowed as a tax deductible expenditure to the group companies concerned, especially since such group companies pay for the cost of ESOPs issued to its employees (whether on deputation or otherwise) by the parent/holding company.

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		of the grant of options nor when such options are exercised.		
7	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 nature of purchase of land, which is capital in nature.	The lessee does not and cannot have any ownership right over the leasehold land. Payment of upfront lumpsum 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 expenses	The 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.
8	Taxability issues for gratuity, leave encashment and other terminal benefits for 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 to the legal heirs of a deceased employee. The existing circulars are very old and 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.

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9	Retirement Funds	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 Fund and Superannuation. Further, as per schedule IV of Part A rule 6 of the Income Tax Act, the employer is permitted to contribute upto 12% of the employee's salary in respect of Recognised Provident Fund. In other words, the Income Tax Law permits contribution upto 15% for Superannuation and 12% for PF.	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 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. Further, the Finance Act 2020 has introduced a ceiling of Rs.7.50 lakhs for employers to contribute in PF & Superannuation Funds. Any contribution in excess of the above amount is 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. In view of the above, the ceiling of contribution as per schedule IV of Part A rule 6 of the Income Tax Act should be abolished. This is leading to a situation where employees are paying perquisite tax and employers are not getting deduction of the amount contributed – a classical double whammy.	In fact, employers should be encouraged to increase the quantum of contributions to ensure proper annuity / pension for the employees. The law should only stipulate that the annuities should be purchased from recognized and approved Life Insurance agencies.Moreover, the stipulations under section36(1)(iv)of the Act and consequential limits fixed on initial contributions should be totally done away with. In fact, if there are gaps / deficits in the Retirement Funds in terms of the total fund position vis-a-vis the actuarial value, the employer should be under a strict obligation under law to pay up the same for bridging the deficit and thereby avoiding a default.

				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%.

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10	Appeals to CIT (Appeals) under section 246A of the Act to include interest under section 220(2) pf the Act	In the last few years, the list of sections covered under section 246A of the Act,in the context of appeals with CIT(Appeals), has been revised. However, interest under section 220(2) of the Act has been missed out and this is currently creating unnecessary harassment for all assessees.	CIT Appeals, who has the authority to decide even on penalty matters, should also be given the power to decide interestimposed / demanded by lower assessing authorities**.**	It is recommended that section 246A of the Act should be amended to include all issues, including interest under section 220(2) of the At.

				It is suggested that detailed stipulations be laid down for any reopening of assessments. Specifically,' 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

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11	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	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. Further, in the context of the introduction of Faceless Assessment regime, the Government should redraft the provisions of section 148 of the Act, since the normal assessment process would get verified and re-verified by the numerous groups involved in the National Assessment Centre and Regional Assessment Centres (for example by the Verification Unit, Review Unit, Technical Unit etc.) prior to passing of an assessment order. 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	It is suggested that detailed stipulations be laid down for any reopening of assessments. Specifically, '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.

		case of very large taxpayers.	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.	

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	Reassessment - section 147/section 148 of the Act…***contd. from previous page***	**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. **<u>Re-opening merely based on statements made by third parties</u>** 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 shred of evidence.		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**.

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12	Tax Refund Procedure	Currently, there is no statutory time limit for grant and payment of refund by the tax authorities. Further, the challenge faced by tax payer in obtaining tax refund creates an unfavourable scenario since the tax payer would look to pay advance tax on a most conservative basis. Having a time based procedure for grant and payment of refund would help in re-building tax payer's confidence on the tax system.	These areas need to be codified since the current situation requires a lot of improvement.	Prescribe time limit for issuance of tax refund and giving of appeal effect.
13	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*	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	It is suggested that suitable amendments must 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

		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% is 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.	objective is to encourage environment protection.	be extended to all the instruments issued under the Indian regulations, which meet the desired objectives of environment protection as envisaged in the Memorandum.
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14	Tax Collection at Source under section 206C(1H) of the Act	Finance Bill, 2020 introduced the provisions of 206C(1H) whereby TCS is required to be collected @ 0.1% at the time of receipt of sale consideration exceeding Rs. 50 lakhs from the buyer with effect from 1st Oct 2020.	The provisions are ambiguous and there are practical challenges in implementation. CBDT has given some clarifications. However, some issues still need clarification which are enclosed as **Annexure 3.** Further, the implementation of these provisions has resulted in huge compliance cost for the assessees as well as various reconciliation issues between parties. As per the Budget Memorandum, the intention in inserting the provisions of sub-section (1H) of section 206C of the Act is to 'deepen &widen' the tax net. It is very unlikely that a seller or a buyer of the level provided in the section will not be filing return of income or would not be	These provisions are against the Govt. of India's professed policy of Ease of doing Business. It is recommended that the Govt. of India must withdraw this provision, especially with the introduction of Sec 194Q of the Act. Alternatively, the organized sector, wherein the entire data is available in the GST returns, should be

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			having PAN number. It is also important to note that presently PAN is compulsory for many transactions, including on sale and purchase of goods exceeding Rs. 2 lakhs etc. Purchase consideration cannot be paid by the buyer in cash as per provisions of section 40A(3) exceeding 10,000/-.Similarly, a buyer cannot accept payment in excess of Rs.2 lakhs, otherwise than though banking system as per section 269ST of the Act. Moreover, under GST law, any dealer having turnover exceeding Rs.40 lakhs is required to be registered and data of sales and purchases made by a registered dealer is duly available on the system. Therefore, it is emphatically stated that provisions of sub-section (1H) of section 206C are not going to effectively serve any purpose, whereas, it has increased thecompliance burden on assessees and created several issues in implementing the provision and establishing compliance processes by the sellers.	exempted from the applicability of this section. Without prejudice, CBDT must come out with the guidelines or appropriate changes must be incorporated in the Act itself, to clarify the ambiguities in the TCS provisions. This will bring about fairness and uniformity in tax treatment and eliminate potential disputes & litigation.
Sl. No.	**Section/Subject**	**Issue**	**Rationale with factual data**	**Recommendation**
15	Tax Collection at Source under section 206C(1G) of the Act	TCS on Overseas tour package	In the context of the current emergency like situation due to COVID – 19 outbreak, the travel and tourism industry is in complete doldrums. This new TCS provision will severely impact the already downtrodden travel and tourism sector. As per the provisions, seller of an "overseas tour programme package", shall collect from the buyer TCS @ 5%. "Overseas	It is recommended that the provisions of TCS on overseas tour package must be withdrawn.

			tour programme package" has been defined as under: "Overseas tour program package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto." The above definition does not clarify what is a "tour package". Therefore, the revenue authorities may take an interpretation whereby standalone services viz. booking of tickets, arranging the hotel accommodation etc. may be said to liable for TCS. Further, the present provision is applicable to all buyers. Therefore, no exemption has been provided for non-resident buyers. Since as per the memorandum the objective of the section is to deepen the tax net, it should not be applicable to non-residents who are not liable for tax in India.	Without prejudice to the above suggestion, it is recommended: a) To avoid disputes and litigation, it must be clarified that tour package must include not just travel or accommodation but a combination of both which has been arranged by the same person. b) A specific exemption must be provided for non-residents from the applicability of TCS provisions for overseas tour programme package.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
16	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 country. There are various classes of shareholders (individuals, trusts, government companies, mutual funds, insurance companies, FPIs FIIs, other non-resident shareholders 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	The requirement of withholding tax on dividend paid to the shareholders has resulted in a huge compliance burden on the Companies and Govt. of India should 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 filing of Form 15CA/CBs particularly in cases where full tax has been deducted from dividend payout to non-residents.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
		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 ifa listed entity desires to declare 'interim dividend'.		
17	Processing of Return of Income – 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 in 143(1) of the Act.
18	Verification of details of Specified Financial Transactions-Section 285BA	Section 285BA requires a specified person to furnish a statement in respect of certain specified financial transaction which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of this Act. Specified financial transaction inter-alia includes transaction by way of an	The data for which the compliance is being asked for is in the nature of sale and purchase of securities. It has also been observed that the data has various errors. For e.g. for certain securities the purchase and sale value is being considered as the face value which is often not the transaction value. Large companies which undertake huge transactions (in thousands of crores) on sale and purchase of securities are now being asked to check line item wise sale and purchase data as furnished on	It is recommended that such compliance should be enforced only for selected assessees on appropriate risk based criteria. For assessees who are regularly filing their return and are being

		investment made or an expenditure incurred. The Income Tax Department has launched a Compliance portal on the e-filing website where data reported u/s. 285BA by the specified person is now required to be verified by the assessees in respect of which the data is furnished.	the compliance portal. It is a very cumbersome compliance and requires a lot of time and effort. When all such transactions are already part of the audited accounts and considered for the purpose of filing the return additional compliance on this aspect is not required.	selected for scrutiny every year and where there have been no issues on these aspects, should not be burdened with additional compliance. It is against the Govt. of India's professed policy of 'Ease of doing Business'.

19	Faceless Assessment Scheme	The Govt. of India has introduced faceless assessment scheme to ensure transparency in dealings between the tax body and taxpayers and to eliminate undesirable practices on account of individual discretion and subjective judgement. This initiative intends to bring uniformity in approach and make the assessment process more standardized and efficient for the taxpayer.	The conventional system of assessment and appellate proceedings provide an opportunity to the taxpayer to explain facts and represent its case personally or through an Authorised Representative before the AO. The faceless scheme envisages that personal hearings will be granted only in exceptional circumstances to be notified by CBDT. In case of complex issues which are prone to litigation, tax payers should have an adequate chance to put across their points to the officials of the tax department. The new faceless assessment system may eliminate personal interface between assessees and the Department officials, thereby eliminating alleged corruptive practices; however, it may lead to an increase in litigation since the revenue authorities will be inclined to make adjustments in absence of complete understanding of the facts and the nature of business of the assessee. A rise in litigation will defeat the Govt. of India's objective of implementing this Faceless Regime. Further, currently, limited data only is allowed to be uploaded on the portal, leading to administrative inefficiencies for the taxpayer. This is a practical issue particularly in case of large companies having voluminous data.	It is recommended that adequate opportunity must be provided to the assessees (especially large tax paying entities) to interact with the tax officials and explain the issues/submissions. This may be done over video conferencing or other digital means. This will ensure that the issues are properly understood by the income tax department and this will help in avoiding adhoc adjustments. Further, the computer systems infrastructure should be adequately updated to handle voluminous data. Assessees should be given the option of submitting voluminous data inhard copies.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
20	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, the Central Board of Direct Taxes (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;

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
21	Order Giving Effect to the Order 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.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
22	Tax on income of new manufacturing domestic companies u/s 115BAB of the Act	For claiming the benefit of a lower tax rate of 15% u/s 115BAB of the Act, a company should not be engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it. A list of issues needing clarification from the Govt. with respect to this section is enclosed as **Annexure4**.	The intent of the Govt. of India in introducing a concessional tax regime u/s 115BAB is laudable and the Industry is expected to invest in manufacturing activities spurred by this fiscal incentive.	There are certain practical issues that industry may face in availing the option u/s 115BAB, as captured in Annexure 4. It is earnestly requested that the Govt. of India provides suitable clarifications in support of its intent behind introduction of this section.
Sl. No.	**Section/Subject**	**Issue**	**Rationale with factual data**	**Recommendation**
23	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.
24	Issue of Certificate under section 281 of the Act in respect of transfer of any	As per the provisions of section 281 of the Act, an assessee can approach the Income Tax Department for issue of a certificate u/s 281 of the Act in relation to any	The provisions of section 281 of the Act, clearly state that the Income Tax Department's Clearance is only in respect of any pending tax proceedings that exist at the point of transfer /	CBDT should give clear instructions to the various income tax offices to refrain from imposing unnecessary

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	asset.	pending tax proceedings in case of transfer of any asset by way of sale, mortgage, gift etc. to any other person. This certificate/clearance helps in making the said transfer free from any risk of attachment etc. in the hands of the transferee.	sale etc. However, it has been observed that presently the Income Tax Authorities are issuing the said section 281 certificate with specific conditions relating to future tax demands that may arise for the said assessee, as well as stipulations relating to advance tax payments for the income/gains in relation to the said transfer. The above is not in accordance with the provisions of the said section and acts as a hindrance to the Government's professed policy of ease of doing business.	conditions relating to future tax dues, advance tax etc. in the certificate u/s 281 of the Act for any asset transfer, since it is not in line with the provisions of the said section and results in unnecessary harassment and undue delay in completing a transaction.
25	TDS on purchase of goods under section 194Q of the Act	The provisions of section 194Q of the Act have been implemented from 1st July 2021. The provisions for section 206C(1H) of the Act applicable on sale of goods which were made applicable from 1st October 2020 have not been discontinued.	The simultaneous applicability of 194Q and 206C(1H) has resulted in unwarranted complexity in the TDS law. Various factors need to be examined for each transaction to apply the correct TDS/TCS provision viz. turnover of buyer/seller, sale/purchase thresholds, exemptions provided etc. Further, constant reconciliation and monitoring is required between buyer and seller for TDS and TCS to avoid any issues. The implementation of these provisions has resulted in huge compliance cost for the assessees as well as various reconciliation issues between	These provisions are against the Govt. of India's professed policy of **ease of doing business**. It is therefore recommended that the Govt. must withdraw these provisions. Alternatively, the organized sector, wherein the entire data is available in the GST returns, should be

			parties. Some issues still need clarification which are enclosed as **Annexure 5**.	exempted from these provisionsin this regard. Atleast, Govt. of India should discontinue Sec 206C(1H) of the Act since 194Q covers all transactions in goods. Without prejudice, CBDT must come out with the guidelines or appropriate changes must be incorporated in the Act itself, to clarify the ambiguities in the TDS provisions. This will bring about fairness and uniformity in tax treatment and eliminate potential disputes & litigation that would otherwise arise.

Sl. No.	**Section/Subject**	**Issue**	**Rationale with factual data**	**Recommendation**
26	Interest on refund u/s 244A of the Act	As per the provisions of section 244A of the Act, the Assessee is entitled for interest on tax refunds due to him u/s 244A till the date of refund.	It has been observed that there is a time lag between the refund determined in the intimation/order u/s 143(1) and the actual receipt of refund by the assessees. In such cases, the actual refund is being given considering the interest u/s 244A	Systems must be put in place to ensure that the interest is allowed till the date of the refund and not upto the date of the order.

			determined upto the date of the order u/s 143(1) and not till the date of refund. The assessees have to file rectification petitions, appeals etc. to get the refund of the interest which is totally uncalled for.	
27	Foreign tax credit 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 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 due date specified for furnishing the return of income u/s 139(1) of the Act. In cases where the payment is subsequent to the return filing date and details are available to the assessee company only after the date of filing the return, the above timeline prescribed for filing Form 67, acts as deterrent to claim the tax credit u/s 90 of the Act. When such 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. As a result, the assessees are denied the tax credit for no fault of theirs since it is impossible to make such claims before the return filing date in absence of requisite details. This results into undue hardship and litigation.	Revenue Divisions 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 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. Neither can the assessee claim the relief in the AY in which the tax credit certificate is received since the income in respect of which foreign tax has been paid has been included in the relevant previous year's tax returns.	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 received by an assessee after the due date for filing tax returns in India. This would avoid hardship for the assessees and will also serve the ends of natural justice.

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
28	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.
29	Issues with the new Income Tax Portal	The Central Board of Direct Taxes (CBDT) has launched the new income tax e-filing portal on 7th June 2021.	The new e-filing portal 'www.incometax.gov.in' has been giving issues from the time the same has been launched. It has been over 2 months since launch, however, the issues have still not been resolved. Some of the issues are mentioned in **Annexure 6**.	The issues of the new income tax portal should be resolved immediately, since the same is impacting the day to day business activities of the assessees, especially corporate assesses
30	Additional Columns to be filled in form 27EQ	On a conjoint reading of Section 206c(1H) and Section 194Q, there would be no obligation on the 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, the seller would have an obligation to collect taxes at	**Columns 680 to 681C of 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	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

		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.	challan and TDS remittance date by the payer is likely to create significant challenges and will also involve significant time and effort as enumerated under:	make the process redundant, in addition to the impossibility/difficulty as highlighted above.

Sl No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Additional Columns to be filled in form 27EQ***(contd. from previous page)***	In such a case, the TCS return also requires the TDS challan number and the date of remittance of TDS by the payer	(a) The charge of TDS is on accrual/payment basis (earlier of the two), whereas the TCS obligation is at the time of collection of consideration. Therefore, the very basis of these two transactional taxes is different and is very difficult to track and reconcile the same for reporting purposes (especially in cases of voluminous sale invoices / block payments/ timing differences). (b) Secondly, the buyers cannot immediately furnish the TDS challan and remittance date. The obligation to make the remittance of TDS falls in the subsequent month and therefore it is difficult for the 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 the TDS return and furnish the TDS certificates thereafter.	Therefore, **columns 680 to 681C of revised Form 27EQ (TCS Form) should be done away with**, at least for purchase/sale of goods which attract provisions of section 194Q/ 206C (1H) of the Act.

Sl No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Additional Columns to be filled in form 27EQ *(contd. from previous page)*		Therefore, the above reporting in Column 680 to 681C In the Revised Form 27EQ not only has practical challenges in collating the details, since tracking and mapping the transactions with challans specifically where the volume of transactions is high, would be impossible to comply with.	
31	Rejection of Foreign Tax Credit for delay/non-filing of Form 67	As per the Double Taxation Avoidance Agreement **("DTAA"),** entered by India with different countries, resident of one country is entitled to claim credit of the taxes paid or deducted outside his country of residence, while offering his global income to tax in the jurisdiction of which he is resident. Accordingly, numerous Indian residents having income outside India are entitled to claim credit of the taxes paid outside India while filing their return of income in India, in accordance with DTAA.	We wish to submit that the entitlement for claiming FTC emerges from the DTAA which India has entered with different countries. Putting additional requirement by way of Rules, such as the one of filing Form 67, for claiming Foreign Tax Credit would make the DTAA subservient the local laws of India.	Thus, it is humbly prayed to do away with the requirement of filing Form 67 for claiming Foreign Tax Credit before the due date u/s 139(1) or alternatively option may also be given to file Form 67 even within the time limit prescribed u/s 139(4).

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Rejection of Foreign Tax Credit for delay/non-filing of Form 67*(contd. from previous page)*	In this regard, **Rule 128, of the Income Tax Rules, 1962** was also introduced w.e.f. 01.04.2017, which was made applicable for assessee, being an Indian resident, claiming FTC. As per Sub-Rule (8) and (9) of Rule 128, the resident, claiming FTC, has to file **Form 67,** on or before the due date of furnishing the return of income u/s 139(1) of Income Tax Act, 1961.	It is a settled proposition that the provision of DTAA always have an overriding effect to the provisions of Income Tax Act, 1961, which has also been expounded by the **Hon'ble Supreme Court** in the case of **Azadi BacshaoAndolan [2003] 263 ITR 70 (SC)** and **P.V.A.L. KulandaganChettiar [2004] 267 ITR 654 (SC)**. Article 51(c) of Constitution of India provides that State shall endeavour to foster respect for International law and treaty obligations. Also, as per Article 253, Parliament has power to make any law for whole or any part of India for implementing any treaty, agreement and convention with any other country or countries. Thus, the provisions of DTAA cannot be undermined by bringing in procedural requirements, in the matter of claiming FTC. As per Section 143(1), while processing the return, only errors or incorrect claims are sought to be rectified, without any human intervention. Rejecting the FTC, u/s 143(1) simply for non-compliance of Rule 128, would also be against the mandate of Section 143(1). Merely, filing Form 67 with delay or not filing Form 67, doesn't point out to the fact of any incorrect claim made by the assessee.	

Sl. No.	Section/Subject	Issue	Rationale with factual data	Recommendation
	Rejection of Foreign Tax Credit for delay/non-filing of Form 67 ***(contd. from previous page)***	In recent times, while processing the return of income u/s 143(1), through online mechanism, those resident taxpayers who had filed Form 67 with delay or had not filed Form 67, their FTC was rejected and demand was created against them to the extent of the amount of FTC claimed along with interest.	Delay in filing Form 67 in majority of cases can be due to genuine reasons, as the amount of FTC to be claimed can be decided only once the assessee has filed his tax returns in other tax jurisdiction or has received the relevant supporting evidences of the taxes deducted outside India. Many of the tax jurisdictions follow different period for taxing the income and have different due dates for filing the return in comparison to India. Thus, there can be situations, wherein, it is inevitable to file Form 67 with delay i.e. after the due date prescribed u/s 139(1), which in the case of individual is mostly 31st July, of the assessment year subsequent to relevant previous year. Such rejection of FTC has resulted into huge demands being generated in those cases, wherein, the assesses have paid taxes abroad and are genuinely claiming credit of those taxes paid. This would result into tax litigation, which otherwise could have been avoided.	

Annexure 1

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 lump sum termination benefits being paid to the legal heir of a deceased employee, who dies while still in active service.**

- Further, there are 2 caselaws **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 taking into account the provisions of section 10(10)(iii) of the Act.**

(c) However, Section 56(1) 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(1)(v)/(vi)/(vii) in the Act, leave encashment, gratuity and other termination benefits received by the legal heir would now become taxable, though the above referred CBDT circulars(which issued before the introduction of Section 56(1)(v)/(vi)/(vii) 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.

Since death of an employee creates a lot of financial hardship to the legal heirs, especially in the ongoing Covid 19 pandemic, and it will be difficult for the legal heirs to calculate and pay taxes on the termination benefits received, it is recommended that CBDT should come out with a clear instruction that leave encashment, gratuity or other termination benefits received by the legal heir(s) of a deceased employee will not be taxable, notwithstanding Section 56(1)(v)/(vi)/(vii) of the Act.

Annexure 2 – Ambiguities in the provisions of TCS provisions

a. Practical difficulties

There may be various practical difficulties in the implementation of these provisions:

(i) Refund of advance if contract cancelled or if credit notes are given

Since the TCS provisions are applicable on consideration received on sale of goods, practical difficulties may arise where advance is collected for sale of goods and TCS is remitted and subsequently the contract is cancelled and the amount is refundable. Credit notes may be issued by the seller which may again raise issues since TCS would already have been collected on such amount.

(ii) What if the Sale consideration is adjusted against the amounts payable for purchases from the said party, whether provisions of TCS would be applicable?

In case of adjustment of amount receivable with the amounts payable, the applicability of TCS has not been clarified. In this case, the consideration has not been received but has been adjusted by way of book entries.

(iii) Mismatch between books and 26AS

Due to the requirement of TCS arising on collection basis, there will timing differences between the year of purchase made by the buyer and the TCS credit amount appearing in Form 26AS. This will lead to reconciliation differences between the books of the buyer and Form 26AS in such a manner that the purchases as in Form 26AS will never match with the purchases in the books of the buyer. This also may lead to selecting the cases for scrutiny on the basis of mismatches.

Recommendation

Appropriation clarification must be provided to resolve these practical issues. It may be provided that instead of receipt of consideration, TCS may be made applicable based on amount invoiced.

b. Applicability of TCS on sellers in the year of incorporation - how to check threshold limit

A “seller” means a person whose total sales, gross receipts or turnover from the business carried on by him exceeds ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out.On a bare reading of the provision, it seems, in the year of incorporation the provisions of TCS should not apply.

Recommendation

A specific clarification to this effect must be provided to avoid ambiguities.

c. Applicability of TCS on composite sales

In certain sectors, like hotels the nature of sales is composite i.e. involving Sale of Services as well as Sale of Goods (Food and Beverages etc.). Whether TCS will be applicable on Hotel Revenue – be it Room Revenue, Food & Beverages, Other Revenue etc., has not been clarified in the provisions.

Recommendation

Supply of food/beverages is essentially a part of the service transaction and should not be considered as sale of goods. This view is fortified by the consistent treatment followed under the GST law wherein such sales are classified as services. A specific clarification must be given excluding Hotel sales from the provisions of TCS.

Annexure 3 - Ambiguities in the provisions of section 115BAB of the Act

Govt. of India / CBDT is requested to come out with a clarificatory circular on Sec 115BAB in the following scenarios such that the intent of the Govt. to encourage investment in the manufacturing sector, both by domestic & foreign players, so as to make **India a Global Manufacturing Hub** is fulfilled:

a) Where a new companyafter investing and operationalising its manufacturing facility in compliance with the provisions of Sec 115BAB of the Act,decides to increase its production capacity after 31March 2023 (or) to enter a new line of business with commensurate investment in manufacturing capacity after 31 March 2023 – will there be any issue u/s 115BAB?

Recommendation: It must be clarified that once an entity qualifies u/s 115BAB of the Act, the said provisionwill continue to apply even on the profits that may be attributable to the enhanced capacity (or) new line of business that may be entered into, by the new entity even after 31 March 2023.

b) As per section 115BAB of the Act, income which has neither been derived from nor is incidental to manufacturing or production shall be taxed at the rate of 22% and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income. It may be possible that there is a loss in one of the business activity (subject to 15% or 22% tax rate). The mechanism of set off of loss of one business activity against the other has not been clearly specified under the Act.

Recommendation: It must be clarified that loss from one business activity subject to a particular tax rate can be set off with the profit in other business activity subject to a different tax rate in the same year or can be carried forward and set off in subsequent years within 8year time limit as specified u/s 72 of the Act.

c) Where anew entity'sshares or availssome of the infrastructure / utility services with another entity, while it is engaged in the business of manufacture / production and distribution of article in terms of Section 115BAB of the Act, will there be any issue in availing Sec. 115BAB?

Recommendation: It may be clarified that so long as the new entity invests in a manufacturing facility to produce any article or thing, it would qualify for the concessional tax rate u/s 115BAB of the Act, even though it may avail some of the common infrastructure/utility services from another entity.

d) **Applicability of Transfer Pricing:** Section 92BA(va) of the Ac, inter-alia, lists specified Domestic Transactions as any business transacted between the persons referred to in section 115BAB(6) of the Act.Rule 10E requires reporting of Specified Domestic Transactions (SDT) in Form 3CEB. Therefore, on a plain reading of section 92BA(va) of the Act, transactions entered into between the persons referred to in section 115BAB(6) of the Act should be reported in Form 3CEB by both the entity covered u/s 115BAB of the Act and the other person.

First Proviso to Section 115BAB(6) of the Act provides that in case of anSDT referred to in section 92BA of the Act, between the person to which this section applies and any other person, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in section 92F(ii) of the Act.Second Proviso to Section 115BAB(6) of the Act provides that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person to which the section applies.

Recommendation: Given the above background, since the adjustment as per the proviso to section 115BAB(6) of the Act is to be determined in the hands of the person to whichthis section applies, the provisions of section 92BA(v) of the Act and the reporting of SDT in Form 3CEB should also apply only to the person to which Section 115BAB applies and not to the other person with whom the said transactions might be entered into.It is, therefore, recommended that suitable notification be issued by the CBDT providing for exemption from reporting of SDT in Form 3CEB to the persons entering into transaction with a person to which section 115BAB applies.

Annexure 4 – Ambiguities in the provisions of TDSunder section 194Q

a. Applicability of TDS under section 194Q on purchase of goods from farmers

Income earned by farmers from the sale of agricultural produce is classified as an Agricultural income, which is exempt from income tax under Section 10 of the Act. Therefore, most of the farmers do not file income tax return. Large majority of the farmers in India are not aware of the provisions of Income Tax and related compliance. Therefore, any deduction of TDS u/s. 194Q read with Sec. 206AB of the Act will lead to incremental cost to the farmers. There is also a possibility of disputes between buyers and the farmers as farmers may consider any TDS deduction by their buyers as a wrong deduction. CBDT has issued Circular 13 of 2021 which specifies that TDS under section 194Q will not apply if the seller is a person exempt from income tax. The exemption does not apply if only part of the income of the seller is exempt.

In case of purchase of farmers, the buyer may not be aware of other non-exempt incomes of the farmers. Further, in case of purchase of agricultural produce, it may not always be possible to identify whether the seller is a farmer or not.

Recommendation

CBDT should clarify that the provisions of Sec. 194Q should not be applicable for purchases from farmers based on a declaration by the farmers (who are sellers) that they are farmers and they earnings are agricultural income exempt from Income Tax.

b. No definition of “Goods”

The provisions of TDS u/s 194Q are applicable on purchase of “Goods”. However, goods have not been defined for this purpose under the Income Tax Law. The definition of goods varies in Sales of Goods Act, GST Law, Excise Law etc. Further, there are various court decisions on the subject under different laws. This has resulted in ambiguity on applicability of the provisions on various transactions. For e.g. Sodexo vouchers, amazon gift vouchers etc.

Recommendation

“Goods” should be clearly defined under the Act.

c. Applicability of TDS in case of transactions covered by Form 27C

On certain items viz. Coal, wood etc. TCS is collectible u/s 206C(1) of the Act. However, if Form 27C is provided by the buyer, the seller need not collect TCS u/s 206C(1) of the Act. As per section 194Q of the Act, the section is not applicable if tax is collectible under the provisions of section 206C of the Act. From a joint reading of these sections, it appears that in case where Form 27C is provided, neither TCS u/s 206C(1), nor TDS u/s 194Q will be applicable. However, the position has not been clarified by CBDT.

Recommendation

CBDT must clarify that if TCS has not been collected on a transaction by virtue of Form 27C, it should not lead to the application of 194Q of the Act.

d. Applicability on composite contracts

There are some contracts which involve the provision of goods as well as services, however, the values may not be identifiable separately. In such cases there is an ambiguity on the applicability of TDS provisions under section 194Q and other TDS provisions.

Recommendation

CBDT must clarify the applicability of TDS in case of composite contracts.

e. Liability on seller for non-compliance of buyer

As per the provisions of section 194Q and 206C(1H) of the Act, it is not clear if a buyer who is liable to deduct TDS u/s 194Q of the Act but has failed to do the same, whether there is any obligation on the seller collect TCS u/s 206C(1H) of the Act ? If the intent of the Govt. is that, where a Buyer does not deduct TDS u/s 194 of the Act, the Seller has to step in and collect TCS u/s 206C(1H), it would be a nightmare of a compliance which a Seller cannot do, especially when he has large no. of buyers.

Recommendation

CBDT should clarify that if the buyer was required to deduct TDS u/s 194Q of the Act, the seller will not be obligated to collect TCS u/s 206C(1H) of the Act. In any event, in case of any failure on the part of the buyer to deduct TDS u/s 194Q of the Act, the consequential provisions u/s 201 would apply to such defaulting buyer.

Annexure 5 – Issues with the new Income Tax Portal

a. Filing of Form 15CA/CB

The portal is not allowing to file Form 15CA/15CB which are required to be uploaded prior to making foreign remittances. CBDT has issued notifications that assessees can prepare the forms manually and file with ADs for making the said remittances. Government is also yet to prescribe new utility for issuance of Form 15CAB and Form 15CB on bulk basis. This is particularly required during dividend payments, wherein huge no. (in thousands) of Form 15CA/15CB need to be issued for dividend paid to non-resident shareholders. In view of the short time available for payment of dividend, bulk basis utility is of utmost importance since manual filing for these many forms is a herculean task.

b. E Proceeding Functionality

There are several issues, some of which are stated as under:

- There is no option to submit the reply without using Digital Signature Certificate (DSC). The earlier portal did not require mandatory use of DSC while making submissions to the Assessing Officer.

- Post submission, although the portal displays the number of attachments correctly, however, the acknowledgement shows incorrect number of attachments.

- The size limit for making the submission is 50MB. However, there are various categories in which the reply needs to be filed. There is a further limit of 5MB per category. Since, most of the submission do not fit into the categories specified for attachments, the reply needs to be filed in the 'Others' category. The limit of 5MB per category is not sufficient to file the reply. Therefore, it is suggested that the 5MB limit per category must be removed and only the overall limit of 50MB be maintained.

As a result of above issues, the assessees are not able to respond to the pending notices on time which may lead to penal actions due to non-compliance within the due dates stipulated.

c. **Assessees are not able to file of TDS/TCS returns since all the required functions are not working in the portal.**

d. The forms filed under the Vivaad Se Vishwas Scheme (VSV scheme) are not accessible/visible on the portal.

e. Issues in filing Form 35 i.e. appeal with CIT Appeals. The assessees are not able to file CIT Appeals on the new portal.

f. Many a times, the assessees are not receiving new notices issued by the Income Tax Department, via emails, in spite of the fact that the correct email ids have been updated in the system. The notices are just updated in the e-filing portal of the assessees, without any intimation to the assessees, sometimes even on holidays. It cannot be expected from the assessees to continuously keep logging in and checking status of notices, if any issued, on e-filing portal. As a result, the assessees are not able to respond to the notices on time. Further, there is no specified place on the portal to check for new notices. The notices are uploaded in the tab of the respective assessment year. In case of large companies having multiple proceedings it is extremely difficult to find out if any new notices are issued by the Department.

   It is recommended that an option be provided in the Portal to sort all notices date wise (irrespective of assessment year or proceeding) to enable the assessees identify new notices issued by the Department. Further, all notices must necessarily be sent to the email ids updated on the income tax portal.