CALCUTTA CHAMBER OF COMMERCE

PRE-BUDGET MEMORANDUM

ON

CENTRAL BUDGET

2020-2021

PRE BUDGET MEMORANDUM ON UNION BUDGET: 2020-2021

The Calcutta Chamber of Commerce is pleased to submit a Memorandum on Central Budget 2020-21 highlighting the points and suggestions for your kind consideration.

SUGGESTIONS ON DIRECT TAX LAW FOR PRE-BUDGET MEMORANDUM

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Clubbing of Income of Minor Sec 10(32)

It is suggested that this should be raised to at least Rs. 5,000/- from Rs. 1,500/- for each minor child as this would encourage investment by parents and secure child's future planning.

Withdrawal of registration u/s. 12AA

S. 12AA is amended by Finance (No.2) Act 2019 to provide that registration of charitable trust can be cancelled in case of non-compliance of '*material*' conditions of other applicable laws.

There are adequate provisions under the Act to cancel registration of non-genuine charitable trusts or where activities are not in line with the objects of the trust. Where the Trust is not complying with other laws as may apply to it, the latter regulations have appropriate procedures to address the same and the same need not be addressed through the Act.

Accordingly, the above amendment should be deleted since determination of '*material*' non-compliance is subjective and increases scope of litigation

COMPUTATION OF TOTAL INCOME

Disallowance u/s. 14A

Rule 8D may be amended to scale down the artificial disallowance under second limb from 1% of average value of investments to 0.5% of average value of investments. It may be clarified that the average value needs to be computed by ignoring revaluation as was the position prior to amendment of Rule 8D in 2016.

It may also be clarified preferably through a Circular that computation as per Rule 8D cannot be applied to 'book profit' computation u/s. 115JB which has to be based on actual expenses debited to P&L A/c.

CBDT Circular No. 5/2014 dated 11.2.2014 stating that the disallowance can apply even if there is no exempt income may be withdrawn on retrospective basis.

INCOME FROM HOUSE PROPERTY

Tax on notional income (S. 22)

Restrict taxation of house property income to rent income actually received / receivable and remove taxation of notional income based on annual letting value.

PROFITS AND GAINS OF BUSINESS OR PROFESSION

Conversion of Current Asset into Stock In Trade is taxable as Business Income (FMV-Cost of Inventory on date of conversion) - Sec 45(2)

It is suggested to provide deferment of payment of tax on business income from conversion of stock in-trade to capital asset till the final disposal of such capital asset to avoid hardship of payment of tax on unrealized gain and bring parity with the method adopted on conversion of capital asset into stock-in-trade.

Allowance of fee paid to Registrar of companies for increase in authorized capital (S. 35D)

Fee on Incorporation of a Company is allowed as deduction u/s 35D as per specified limits in 5 Instalments

However amount paid for increase in authorized capital is not allowed as deduction at all, though the amount is paid to government as a fee.

Suggested that fee paid to Registrar of companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal instalments u/s 35D.

Due date defined under Explanation to Section 36(1)(va) should be amended

Due date shall mean the due date for filing return of income under section 139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act.

Section 40(b)

Allowable remuneration for each of the working partner be changed at the rate of Rs. 1,80,000 per annum per partner or 90 percent of book profits whichever is more for first Rs. 10,00,000 of book profits and 75 percent of the remaining book profits.

Payments to related parties covered u/s. 40A(2)(b)

S.40A(2) should be amended to carve out exceptions for transactions between related parties where none of them are loss making or availing any tax incentive. This will improve 'ease of doing business' and remove uncertainty for taxpayers.

Cash payments by business segment availing presumptive taxation scheme

Since there is no specific disallowance being triggered in terms of section 40A(3) of ITA in case of presumptive tax provisions, it leads to scope for such taxpayer to indulge in cash payments without fear of disallowance.

Since it may not be feasible to provide for specific disallowance under the presumptive taxation scheme, as an alternative, some incentive may be provided to taxpayers for encouraging them to use banking channel for making payment for business purchases as also other general expenses such as salary, wages, labour, rent, electricity etc.
One such mode to incentives could be the reduced rate of presumptive taxation along the lines of proposal for acceptance of digital payments by the traders. The incentive of 2% reduction in presumptive income rate may be split in the form of 1% each for receipt and payment through banking / digital modes.

Section 44AD

Section 44AD relating to presumptive taxation applies only to businesses run by residents Individual, HUF and Firms excluding LLP. The benefit of section 44AD should also be made available to LLP

CAPITAL GAINS

Section 54EC: Time limit for investment in specified bonds to increase

Suggested to amend section 54EC so that time limit for investment in specified bonds may be allowed up to the due date of filing of ITR instead of 6 months from the date of transfer.

Further, considering the inflationary conditions in the economy, it is further suggested that the said limit of Rs.50 Lakhs may be raised to Rs. 1 crore.

Clarification required with respect to one-time option introduced u/s. 54 for availing exemption by re-investment in two residential houses

Provisions of s. 54 provides for an exemption from capital gains tax where the assessee makes investment in a specified asset. The proviso to s. 54(1) substitutes the term "new asset" by "two residential houses" to extend the benefit to the taxpayer investing in two residential houses instead of one. However, the present language is not clear in terms of the following aspects:

- The exact timing of exercise of option.
- Where taxpayer with the anticipation to buy two houses deposits the amount in capital gains account scheme, thus exercising the one-time option but subsequently is able to purchase only one house, whether the deduction u/s 54 be denied because it mandates acquisition of two houses.

It is recommended that to enable the taxpayer avail the benefit of this provision, suitable clarification be provided either by way of legislative amendment and/or through a Circular.

Section 71(3A) – Loss from House Property:

Section 71 of the Act provides for set off of any loss arising under the head "Income from House Property" against any other head of income.

As per section 71, it is restricted to set off the losses to the extent of Rs 2,00,000 against any other head of income and unabsorbed loss to be carried forward up to subsequent 8 assessment years.

Suggested to withdraw the said amendment and alternatively, the limit of Rs 2 lakhs may be raised to at least Rs 5 lakhs

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME

Section 80TTA

It provide deduction of up to Rs.10,000 in the hands of individuals and HUFs in respect of interest on savings account with banks, post offices and cooperative societies carrying on business of banking. Interest on all types of deposits (eg FDRs) may also be included within the scope of section 80TTA.

Section 80TTB

It allows a deduction upto Rs 50,000/- in respect of interest income on deposits made by senior citizens.

It is suggested that income by way of interest on National Savings Certificate also be included within the ambit of provisions of section 80TTB, so that senior citizens who have purchased NSCs from post offices are also able to avail the benefit of enhanced deduction under section 80TTB.

COLLECTION AND RECOVERY OF TAX-DEDUCTION AT SOURCE

Requirement to issue TDS Certificates be abolished

The requirement of issuance of TDS certificates should be abolished with immediate effect.

Section 194J

Suggested that section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.

Relief from compliance burden and onerous consequences of TDS default for payers / payees

TDS provisions need to be rationalized and there should be a common minimal rate of 1% or 2% across all the payments to avoid disputes on characterization of payment for TDS purposes.

There should be explicit provision in the ITA which clarifies that if income is exempt in the hands of the payee, then there is no TDS requirement which is merely an empty formality in such cases where payees have to ultimately claim refund.

Form 26AS to include PAN of deductor and the Unique TDS Certificate Number

Form 26AS should also incorporate the PAN of the deductor and the unique certificate number so that the same can be reviewed and matched with the books of accounts of the company

Levy of additional tax on cash holding & cash expenditure

With a view to discourage cash holdings, additional tax (akin to wealth tax) may be levied on holding cash over specified threshold limit as on the last day (i.e. 31st March) of financial year:
For taxpayers engaged in business or profession,

a) who are liable to tax audit under the ITA - Rs. 10 lakhs;
b) other taxpayers - Rs. 5 lakhs
For individuals and HUFs not in business or profession - Rs. 5 lakhs

With a view to discourage cash expenses, there should be levy of some tax on expenses in cash beyond the specified limit as under:

For taxpayer engaged in business or profession:

a) who are liable to tax audit under the ITA - if aggregate expenditure exceeds Rs. 25 lakhs
b) other taxpayers – if aggregate expenditure exceeds Rs. 10 lakhs

For individuals and HUFs, in relation to personal expenses, if aggregate expenditure exceeds Rs. 10 lakhs

PROCEDURE FOR ASSESSMENT

E-assessment scheme (S.143(3A) w.e.f 1 April 2018)

The Notice u/s 148 should be accompanied by: (a) the reasons recorded in writing by the AO and (b) The approval u/s 151 if obtained, and if not the reasons for the same. The litigation on the validity of the proceedings and technicalities regarding the recording of the reasons and the necessary approvals will be put to an end. The transparency and minimal interaction between the officer and assessees will be minimised and the goal of simplicity will be achieved.

Further it may be provided that the assessee has the right to object to the reasons recorded and if so done, the same are to be disposed off by the AO by an order in writing, before completion of the assessment.

It is recommended that cases which are covered within the purview of s. 144C of the ITA be continued to be covered by existing scheme of DRP. Further, the existing process of TP assessment and extended time limit may be appropriately incorporated in e-assessment scheme.

Taxpayer should be allowed to present its case through video conferencing at all levels during the course of assessment under the E-assessment Scheme

Section 154 (8) Rectification of Mistakes

Sub-section (8) of section 154 provides that where an application is made by an assessee or a deductor, the authority shall pass an order within a period of six months from the end of the month in which the application is made by either (a) making the amendment or (b) refusing to allow the claim. In spite of the specific provisions of subsection (8), it is observed that the authorities take unusually long time in deciding the rectification application either way. Many a times in fact the rectification orders are never passed for years and in the meantime the department keeps on the recovery proceedings and also adjusts the subsequent refunds against the demand for which the rectification applications are pending disposal. This results in tremendous hardship to genuine tax payer.

It is humbly suggested that the sub-section (8) of section 154 shall be modified so as to provide that if the authority concerned do not decide the rectification application of the assessee or the deductor within the prescribed period of six months, then the application should be deemed to have been allowed and the tax liability will be deemed to have been reduced in accordance with the rectification application of the assessee.

REFUNDS

Interest on income tax refund u/s. 244A

In the event the demand is reversed by higher appellate authority, the interest on refund to the tune of 1% for every month or part of the month should be provided from the date of the assessment order till the date of credit of refund to the account of the tax payer.

PENALTIES IMPOSABLE

Exposure of penalty levy u/s 270A even when entire tax amount is deposited by way of advance payment of taxes (no credit for taxes withheld, advance taxes paid, self-assessment tax, etc.)

With an intent to bring in objectivity, certainty and clarity in penalty provisions, Finance Act 2016, w.e.f. AY 2017-18, introduced s. 270A to provide for levy of penalty in lieu of s. 271(1)(c) of the ITA. The scheme of new penalty provision seems to be comprehensive and provides for detailed mechanism for the manner of computation of under-reported income, exclusions therefrom, cases of misreporting of income, the rate of penalty levy, computation of tax payable for determining quantum of penalty, etc. It also provides window to the taxpayer for applying for immunity after fulfilling conditions specified in s. 270AA of the ITA.

Hence it is recommended for insertion of separate provision similar to Explanation 3 to s. 271(1) to avoid genuine hardship to the taxpayer in cases where there is no loss to the revenue.

S. 270A(10) be suitably amended to provide for credit for pre-paid taxes (TDS, advance tax and self-assessment tax) along the lines of erstwhile Explanation 3 to s. 271(1)(c), in computing amount of tax payable on under-reported income

Misreporting covered cases of deliberate misconduct: s. 270A(9)

In order to avoid above mentioned unintended consequences of covering even bonafide / innocent mistakes within the ambit of s. 270A(9), it is recommended that a suitable clarification by way of an Explanation or proviso be provided under s. 270A(9) suggesting that the cases intended to be covered by s. 270A(9) is of deliberate / wilful misconduct on the part of taxpayer.

Denial of benefit of immunity even if one of the items of under-reported income is arising as a consequence of misreporting of income (s. 270AA)

Since the provisions for immunity are introduced to avoid litigation, it is advised to make immunity provision qua addition / disallowance and not qua assessment order. Hence the taxpayer should be allowed to apply for immunity for all such additions / disallowance for which initiation of penalty is not as 'misreporting of income'.

Refund to be granted in timely manner

The issue of manual refund requires approvals from various higher authorities, which is a time consuming process and delays the refund to the assessee as compared to e-refunds. It is recommended that a simple time bound process should be set up to ensure timely refunds to the assessee wherever there is no mechanism to issue e-refunds.

PAYMENT OF DISPUTED AMOUNT OF TAX

At present a assessee is required to pre-deposit 20% of the amount of disputed tax before the appeal is entertained by the Appellate Authority. This provision is too harsh and there is no limit of maximum amount. It creates more difficulties to assessee in whose case best judgement assessments are made at a very high figure. It is therefore, suggested that the provision for payment of 10% of disputed tax or Rs.10,000/- whichever is lower should be made applicable before filing of Appeal.

OTHERS

Higher Surcharge on individuals, AOP, BOI and AJPs (A.Y. 2020-21)

The higher surcharge should be applied on incomes chargeable to tax at regular slab rates. Capital gains income on all assets (& not merely listed securities) can be excluded for the purposes of computing total income of Rs. 2 Cr / Rs. 5 Cr.

Demands Raised by CPC :

These days a number of old demands (ranging even upto 10-15years back) are all on a sudden raised against the assesses by CPC. But, since the I.T. Act does not require the assesses to keep such old records for more than 6 years (barring some specified cases), the assessees are not in a position to substantiate their payments against all such old dues.

As such, there may be a time limit beyond which no such demand will be raised, unless some litigation is pending for the same year.

SUGGESTIONS ON GST LAW FOR PRE-BUDGET MEMORANDUM

1. Procedural Rationalisation of ITC matching:

As per Rule 36(4) ITC has been restricted to 10%[1] of that reflecting in GSTR-2A. As per the clarification issued by CBIC vide 123/2019 dated 11th November, 2019, the board has shouldered the responsibility on the tax payer to ascertain the ITC being auto populated as on the due date of filing GSTR-1. This matching of GSTR-2A which is so dynamic, shall be made available on the GST portal as it is not possible for all the tax payers to download the GSTR-2A that on the due date of filing GSTR-1. Other difficulties faced due to this rule are as following:

- **Quarterly filing of returns (GSTR-1) by the supplier: Mismatch due to time difference in filing of return**
- **Reconciliation of GSTR-2A with ITC as per books is a time consuming process as every month reconciliation is also required to be done for previous months ITC.**
- **Blockage of working capital as tax already paid by recipient but ITC delayed to due to non filing of return by supplier.**

Suggestion: To omit the applicability of the Rule imposing restrictions limiting input credit at 20%/10% of ITC appearing in GSTR 2A.

2. Time Line as per Section 16:

The time line for claiming ITC for the financial year as per section 16 (4) is earlier of the following:
a) Date of filing the Annual Return or
b) Due date of filing return under section 39 for month of September of the following year, which is 20th of October.

The issue involved here is that the due date for filing GSTR-1 quarterly is 31st October for month of September, which is later than the due date of section 39 return. Hence, ITC related to suppliers filing quarterly return may lapse. Considering the provisions of Rule 36(4) section 16 shall be amendment accordingly.

Suggestion : To extend the time limit for availment of ITC to due date of furnishing the Annual Return.

3. Restriction on eligibility of ITC:

As per section 16(4) one of the eligibility criteria for availment of ITC is that the supplier should have filed the return.

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[1] 20% till December 2019 and 10% w.e.f. 01st January, 2020.

The issue here is that in many cases the recipient has already made the payment of ITC to the supplier but due to non compliance and non payment by the supplier, the ITC is not available to the recipient. Further at times due the supplier must have also paid the tax but has shown the supply as B2C instead of B2B transaction, due to which ITC is not available to the recipient.

Suggestion : Since the tax has already been paid by the recipient and will be duly recovered or must have been recovered by the Government, the ITC shall not be denied to the recipient. Restriction of such ITC tantamount to unjust enrichment in hands of the department. Further the department cannot punish the recipient due to mistake of the supplier.

4. Blocked Input Tax Credit

As per Section 17(5) of the CGST/SGST Act 'Input tax credit shall not be available in respect of the:
(*c*) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
(*d*) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Issue - Input Tax Credit on works contract and construction services are blocked Credits except in case where used for providing similar service. This can cause a genuine hardship to the persons who shall be using such goods/services for construction of their factory, or those persons who shall be constructing a property for letting it out. In such cases the rentals would be charged with full rate of GST, but there won't be any allowability of credit of GST paid on construction services/goods.

Suggestion : It is suggested that credit of goods/services acquired in the construction of immovable property should be extended when used for factory/office buildings which are used for business or further letting out.

5. Invoicing

Issue – Section 31(3)(g) of CGAT Act, 2017 requires issuance of payment vouchers at the time of making payments to such vendors.
These compliances creates huge burden on the registered person

Suggestion : Issuance of payment voucher should be done away with.

6. Delivery Challan

Issue - Rule 55 of CGST Rules require issuance of delivery challan for transport of goods without issue of invoice. The prescribed particulars to be mentioned on such delivery challan include *taxable value*. However, it is practically difficult in most of the cases to provide the taxable value of goods being transported for reasons other than supply such as job work, etc.

Suggestion : Mentioning of taxable value should not be mandatory on delivery challan (for all registered persons or for those having aggregate turnover below a specified threshold) and the relevant rules should be modified accordingly.

Alternatively, a specific valuation mechanism should be specified in the valuation rules for the taxable value to be mentioned in case of delivery challan for goods sent to job worker.

7. Section 9(3) of CGST Act, 2017

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Issue:

An unregistered recipient of specified categories of goods or services or both, shall be liable to pay tax on such goods and services, as if he is the person liable to pay tax. For the purpose of paying the tax, he shall be liable to get registered under the Act. And once he gets registered under the Act, he shall be liable to comply all the provisions of the Act, which are applicable to a registered person:

a) File all the periodical returns from time to time

b) Pay tax on reverse charge basis under section 9(4) - at present suspended till 31st March,2017

Suggestion: Up to a certain threshold of tax liability, the recipient should be given a facility of paying tax through a challan cum return mode as is available to a deductee under the Income Tax Act, 1961. Whenever a person purchases an immovable property exceeding 50 lakhs, he is liable to deduct 1% of the total consideration paid to the seller. After deducting the tax, he has to pay the tax to the credit of the Central Government. Without taking registration under the provisions of TDS, he is given the facility of paying the tax through form 26QB.

Similar facility can be provided in the GST law, so that any person liable to pay tax under section 9(3) of the Act, can do the same without being liable to comply with several provisions of the Act which have been mentioned above.

8. Place of Supply

Section 12 of IGST Act, 2017 prescribes the determination of place of supply of services where both service provider and service recipient are located within India.

Issue - It has been observed that in many cases such as Accommodation services in Hotels, the place of supply has been specified to be the location of such hotel. Hence the service provider is charging CGST and SGST in such cases. However there are situations where the service recipient is registered in some other state outside the state where such hotel is located and hence such recipient is not getting the credit of such tax paid.

Suggestion : It is suggested that place of supply of services covered under Section 12 of IGST Act, 2017, should be specified to be the place of registration of the service recipient in case of registered persons and address on record in case of unregistered persons, and where no address is available for such unregistered recipients, then place of supply can be deemed to be location of service provider.

9. Transfer of Land etc. by way of compulsory acquisition, inheritance, testament, gift etc.

Clause 5 of Schedule III of CGST Act, 2017 as specified in Section 7 provides that Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building would be treated as an activity or transactions which shall be treated neither as a supply of goods nor a supply of services.

Issue - Sale does not include transfer of land by way of compulsory acquisition, will, inheritance, testament etc. Such transactions if kept out of the purview may create problems and confusion.

Suggestion : It is suggested that the word 'transfer' should also be included as an activity or transactions which shall be treated neither as a supply of goods nor a supply of services. Also it should be clarified that transfer of right in an immovable property by way of nomination by a person to another person will also be out of GST.

10. Refund in case of accumulated Credit where input tax credit amount is higher than tax liability.

Sec 54(3)(ii) of CGST Act provides that no refund of unutilised input tax credit shall be allowed in cases other than where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Issue:

A manufacturer or a service provider may have accumulated credit balances for the reason that he is availing input services which attract at higher rate of GST (say, 18% or 28%) whereas the final product or output service attracts GST rate of 18% or 28%. However, this provision allows refund benefits only if the input is subject to higher rate of GST and not in case where the input service attracts higher rate of GST. If a strict interpretation is taken that refund would be allowed only if the GST rate of input is higher without considering the rate of input service, then the very object of the provision would stand defeated**.**

Suggestion : It is suggested that the word 'inputs' be replaced with the phrase 'inputs or input services' Also, the word 'Output Supply' be replaced with the word 'Outward Supply'

11. Definition of Exempt Supply

As per the definition given in Section 2(47) of CGST Act, "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Issue

Non-Taxable Supplies have been excluded from the scope of Aggregate Turnover in the CGST Act but still the term "Exempt Supply" covers the same. Thus, inclusion of non-taxable supply in the exempt supply would ultimately bring it within the scope of aggregate turnover.
Interpretation of aforesaid definition appears that supply made to job worker covered under exempt supply.

Since a registered taxable person may send any inputs and/or capital goods without payment of tax, to a job worker for job-work and there from subsequently send to another job worker.

Suggestions : It is suggested that non-taxable supplies be kept outside the ambit of 'exempt supplies' as well as 'aggregate turnover'. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.

An amendment may be required in said definition that ''Exempt supply means any supply of goods/services which are non-taxable under this act other than supply for job work in accordance with Section 143 of the Act and includes such supply of goods or services or both, which attract nil rate of tax or which may be exempt from tax under section 11.

12. Valuation of land

As per Notification no. 11/2017-Central Tax (rate), the value of land has been prescribed to be 1/3rd of the total amount charged

Issue – The value of land may have huge variations from one place to the other. In certain areas of the metro cities, the value of land may run upto 80% of the total amount charged while in the smaller developing areas, it can be as low as 15% of the total amount charged. So, there can be a huge under or overvaluation of the amount to be charged as GST.

Suggestion : A reasonable basis to determine the value of land should be prescribed. Land values may be prescribed by state authorities on the basis of pin code, area etc. and the same can be considered as a reliable measure of the same.

13. Tax liability on TDR, FSI (additional FSI), long term lease (Notification No. 4/2019, 5/2019, 6/2019 of Central tax (Rate):

Issue - Applicability of tax payable under RCM by promoter on unbooked flats will indirectly lead to levy of tax on sale of such flats post issuance of completion certificate (C/C). This in effect nullifies the fact that there is no GST on sale of flats post C/C (Schedule III activity).
Moreover such tax on transfer of development right, if applicable earlier, was a credit to promoters, but now the same has become cost to the extent of unsold flats.

In case of an RREP, even if the rate of tax for commercial apartment would be at 5%, the promoter would have to pay tax on RCM basis to the extent of proportion of commercial area. This has a big cost implication for commercial apartments and effectively would mean double taxation on commercial apartment in an RREP.

Suggestion: GST payable by Developers under RCM pertaining to unsold flats should be removed.
The GST exemption on supply of development rights be extended to the commercial apartments in RREP, since they have been treated at par with residential apartments.

14. GST on Leasehold units (Commercial)

Issue - In several cases, Developer constructs a commercial building on a leasehold land (say for 999 years) and transfers units to the buyers with leasehold right in land. As per Explanation (b) to para 2 of Notification no.11/2017 – Central Tax (Rate) dated 28th June 2017, 1/3rd of the total amount charged shall be available as deduction for transfer of such leasehold land before obtaining completion certificate**.**

Deduction of 1/3rd value from the total amount charged is available on supply of leasehold land involved in construction services before obtaining completion certificate, deeming it as a sale of land and effective rate is 12%. When the constructed units on such leasehold land are

transferred after Completion certificate, how can the same be taxable considering it as a leasing activity at full rate of 18%?

Suggestion : Transfer of Constructed units on Leasehold land (on long term lease) after completion certificate is obtained where appropriate stamp duty is paid, should be included in Schedule II to CGST Act i.e. activities which are neither supply of goods nor supply of services.

15. Compliance of definition of supply as per Sec 7 read with schedule 1 for related persons

Issue: As per the definition of supply in section 7 read with Schedule 1 entry for related persons, it is seen that in hospitality sector and other similar sectors were food is being provided by the companies to their employees which is not a part of CTC of the employee and neither any reimbursement is being done from the employees, the companies have to pay GST on such supplies because of deeming fiction in schedule 1 treating the same as supply. Moreover, the valuation of the same is also stated to be done as per open market value as per Rule 28 of the CGST Rules, 2017 as amended from time to time. This is creating unnecessary financial burden on the company and in turn on the employees also.

Suggestion: Schedule 1 may be suitable amended to provide that in case of supply of goods/services by employer to employee would not fall under the definition of related persons and thereby no such tax has to be paid on supply of food. Otherwise, it may be clarified that supply of food by the company would be treated as in course of employment and hence covered by Schedule 3 of the Act.

16. Sale of Fixed Assets/Capital goods and reversal thereof in case of leasing business

Issue: It has been observed that in case of rental/leasing of consumer electronics/computers/laptop etc. industry wherein the service provider is located in multiple states, If the service provider is transferring the said fixed asset from one location to another location in a different state having different GSTINs, then the application of section 18(6) of the CGST Act, 2017 has to be done which results in payment of GST among same entity. Moreover, the transferee GSTIN again gets a period of 5 years to treat the same as capital goods again, though at company level the asset may have NIL value, leading to incorrect disclosures in GST vis-à-vis financial books of accounts.

Suggestions: section 18(6) be suitably amended to provide that the same would not be applicable in case of transfer of asset within same entity/PAN.

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Points discussed in the Tax Committee Meeting held on 21-12-2019

- Search & Survey: At the time of raid in any house, videography should be done in terms of transparency of the assessee. – Shri Jinesh Jain

- ITBA Notice: Reasonable time should be given at the time of posting of notice in the portal. Notice or text should be posted through mail at least before two weeks.

- E-Way Bill: Related to manufacturing or industry.

- Rule 11UA: Registered Valuers should be added for valuation towards merchant's bankers under IBBI.

- Section 16

- Section 50:

- Section 139(9): Time should be given at least 30 days instead of 15 days because time span is very short.

Suggestion by Shri Jinesh Jain

(1) Sec.2(15) – Charitable Purpose

Clarification is required as regards the possibility of non-consideration of all objects as "Non-Charitable" where one object may be hit by Sec.2(15) – Proviso. From the Return Form ITR-7 it appears that only for that object in respect of which Sec.2(15) – Proviso applies, exemption u/s 11 will not be available.

(2) Sec.36(1)(va) – Employees' Contributions to PF/ESI

For eligibility to deduction, the Due Date should be as per section 139(1) similar to section 43B.

(3) Sec.54EC – Deduction for Investments in Bonds from Long-term Capital Gains

Due to the withdrawal of the Capital Gain arising from transfer of any Capital Asset other than Immovable Properties from the purview of this deduction, there does not exist any scope of reducing the tax liability in respect of any Long-term Capital Gain arising from transfer of a Capital Asset other than Immovable Properties. The old Provision should be brought back for allowing Deduction in relation to transfer of all types of Capital Assets.

(4) Sec.50C – Assessee's right to request the Assessing Officer for Departmental Valuation

Presently an assessee loses its right for demanding Departmental Valuation if the assessed Stamp Duty Value is disputed before any Authority. This restriction should be removed in order to allow an assessee to demand for Departmental Valuation in all cases where there arise variation in between the actual Sale Value and the Stamp Duty Value.

(5) Sec. 139(5) – Right to furnish Revised Return of Income

Since an assessee may locate mistake in its Return after a long time, the time limit for furnishing a Revised Return, should be extended up to the end of the expiry of one year from the end of the relevant Assessment Year as it had been prevailing up to the Assessment Year 2017-18.

(6) Sec. 154/246A – Rectification not made within the Time allowed u/s 154(8)

Provision should be inserted in section 246A allowing an assessee to file an Appeal against the non-compliance of section 154(8) on the expiry of the prescribed Time limit.

Suggestions / Proposal in Direct Taxes for upcoming 2020 Budget

By CA Anand Muskara:-

1. **Section 115QA for buy back of shares** - purchase price by company of its own share should be either at book value or fair market value it is not clear and disputable point. We need to bring clarity in this point.

2. **In case of arbitration for dispute resolution** any money is parked with arbitrator in the bank in form of fixed deposit in the name of arbitrator and interest is credited to Fixed Deposit and tds is deducted in name of arbitrator and income does not belong to arbitrator - in whose hands it is taxable and who will take the benefit of TDS. In case the award is given after lapse of seven year how it will be chargeable to tax at that point of time. In between litigation who should be held responsible to pay tax.

3. **Reopening of assessment u/s 148** - In case of reopening of case u/s 148 interest is payable for seven years it is very big hardship for the assessee even if the assessee has disputed the demand he has to pay 20% of the disputed demand. The interest should be chargeable from the date of initiation of notice in case of section 148.

By CA Rajat Agrawal:-

1. **Real Estate hardship** - Section 45(5A) dealing with development agreement covers only area sharing development agreement and is applicable only for individual and HUF. It should be made applicable for all types of assessee and for revenue sharing development agreement as well.

2. **Rule 11UA for valuation of unlisted shares** requires intrinsic valuation of the company wherein market value of properties etc to be considered. Some carve outs should be there eg. further downstream investment in shares may be avoided, persons selling very small fraction of shares of the company should be exempted. Otherwise it creates a very big hardship on the assessee.

3. **PF beyond due date**- There is a matter pending beforehonourable supreme court regarding allowability of employee contribution to PF beyond due date of deposit under PF Act but paid before the due date of Income Tax return filing, which is leading to additions in case of thousands of assessees. This hardship should be removed and necessary amendments may be made in Act itself in allowing such expenditure.

4. **Rate Of Tax -**There is no reason why LLP or partnership firm are kept in 30% tax bracket which is very high as compared to direct tax levied on corporate assessees. At least

assessees(Firm / LLP) whose total income is less than ten lacs should have lower tax bracket.

Points discussed in the Tax Committee Meeting held on 21-12-2019

119(2)(B): The Income Tax Department has been given wide authority by the CBDT U/s 119(2)(B) of the Income Tax Act to admit an application or claim for any exemption, deduction, refund or any other relief after the expiry of the period specified under the Act. Such powers of wide authority should include the powers to condone the delay in specific cases of failure to submit ITR5 as well. Such relief is given to taxpayers based on certain criteria.

If the Board consider it desirable or expedient for avoiding genuine hardship in any case or cases, by general or special order, it can authorize the Income Tax Authority to admit an application or claim for exemption, deduction, refund or any other relief under this Act for making such application or claim and dealing with the same on merit in accordance with law.

131A: It is to be appreciated that an Income Tax Authority is not entitled to exercise power U/s 131(A) as a mere cloak for making a fishing investigation and roving enquiry.

The information called for is without due care an application of mind and vitiates the very foundations of summons sent.

Such misuse of powers needs to be checked; else it would lead to unnecessary duplication of proceedings and cause unnecessary inconvenience and botheration to taxpayers. Hence guidelines for the use of powers U/s 131(1A) need to be issued by the CBDT urgently. Discretion provided under the law must be exercised judicially; otherwise the purpose of the law will be defeated.

ITBA Notice: As part of government's initiatives towards e-governance, Income Tax Department has brought digital Transformation of its business processes to significant extent through the Income Tax Business Application (ITBA) project which provides an integrated platform to conduct various tax proceedings electronically through the e-proceeding facility available on it. CBDT has issued series of circulars on the subject matters in the last two years.

if the situation is such, on one fine morning such enquiry notice started appearing in assesses log in account, of which assesse is totally unaware. Now if no simultaneous email/SMS is received by assesse alerting him about the issue of such enquiry notice, the notice is likely to remain unattended within specified time limit resulting in to assesses being exposed to unwanted harassment of assessment- reassessment proceedings.

It is recommended reasonable time should be given at the time of posting of notice in the portal. Notice or text should be posted at least before two weeks.

Rule 11UA: The CBDT amended the rule 11UA of Income Tax Rule 1962 by omitting the words "or an accountant from Rule 11 UA(2)(B)". This change meant that the valuation report has to

be obtained only from a Merchant Banker. This might require an approaching a valuer who is recognized under Companies Act and Income Tax Act, who is both a registered valuer and a merchant banker. Now come the difficulty with compliance. Compliance under Rule 11UA is difficult, since there are very few merchant bankers. It is recommended that registered valuer should be added for valuation.

E-Way Bill

Search & Survey: At the time of raid in any house, videography should be done in terms of transparency of the assessee.

Sec. 16:
Indirect Tax : i) Sub Rule 36(4) :

The enforcement of new Sub Rule 36(4) has further complicated GST procedure.

Under input tax credit, purchaser can claim credit to the extent of GST paid on the purchase instead of adding the tax to the cost price. Under the new sub rule, the purchaser can not avail input tax credit on purchase. Such sale transaction should get reflected in the GSTR 2A of the seller after submission of monthly GSTR1 (Return).

If the tax amount is not reflected in the GSTR 2 of the seller or is less than the tax amount availed by the purchasing dealer, then the dealer would be to avail credit up to a maximum 20% of such excess amount only. This restriction on availing ITC by the purchaser is arbitrary and unjustified.

Sec. 50C : The amendment to Sec 50 was proposed in 2019 Union Budget. For tax payers who have already paid interest on the full tax liability in the current financial year, including that portion paid using credit, the official notification once released will provide clarity on whether they are eligible for a refund.

The new proviso clarifies that the interest would be levied on the part of tax which has been paid by debiting the electronic cash ledger and not on the amount pertaining to the input tax credit.

There is one exception to this Rule wherein interest shall be levied on gross tax liability. The new provision is applicable only where the taxpayers files his return and pay his tax on his own but in case returns are filed subsequent to initiation of any proceedings under GST Act, the interest shall be levied on the gross tax liability.

Sec. 139(9) : **Return filing** – Time should be given at least 30 days otherwise the time span is very short.

From: RISHI KHATOR <rk@chunderkhator.com>
Date: Sat, Dec 28, 2019, 17:03
Subject: Pre budget memorandum - Few pointers in bullet
To: MADHAV PRASAD SUREKA <mpsureka.co@gmail.com>

Dear Sureka Ji

Pls find below few pointers -

· Extension of SEZ scheme to beyond 31.3.2020. Govt. should also consider providing 3-5 year horizon so that new entrants can plan their operational locations accordingly.

· There should be standardization of assessment orders for similar cases and so distributed among Income tax assessing officers pan India. This will avoid conflicting assessment on same issues and also further the cause of faceless assessment

· Increase in limit of TDS from Rent to Rs.5 lakh per annum from the present Rs.2.4 lakh

· Increase in maximum amount not chargeable to tax from existing Rs.2.5 lakh to Rs. 5 lakh

· Allowable remuneration to partners : first slab be raised Rs. 3 lakh to Rs 7.5 lakh.

· Presumptive rate of taxation for professionals – Should be reduced from 50% to 33/33 %

· Presently interest on housing loan even on let out (or deemed to be let out) house property is limited to Rs.2 lakh. This limit to be withdrawn as it is hurting investments in house property. Earlier there was no limit.

· Further, limit on interest on housing loan in self occupied house property to increase to Rs.3.5 lakh per annum.

· To increase 80C deduction limit from present rs.1.5 lakh to Rs.2.5 lakh

· Increase in limit u/s 194J from Rs.30000/- to Rs.50000/-

Thanks and Regards,
RISHI KHATOR
FCA, CPA(US), CIFRS
Partner
CHUNDER KHATOR & ASSOCIATES
Chartered Accountants
Creating Value and Confidence

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Suggestion for l changes in Indirect Taxation:

By CA Pramod Dayal Rungta & CA Surabhi Bohra

1. Procedural Rationalisation of ITC matching: As per Rule 36(4) ITC has been restricted to 10%[2] of that reflecting in GSTR-2A. As per the clarification issued by CBIC vide 123/2019 dated 11th November, 2019, the board has shouldered the responsibility on the tax payer to ascertain the ITC being auto populated as on the due date of filing GSTR-1. This matching of GSTR-2A which is so dynamic, shall be made available on the GST portal as it is not possible for all the tax payers to download the GSTR-2A that on the due date of filing GSTR-1.

2. Time Line as per **Section 16:** The time line for claiming ITC for the financial year as per section 16 (4) is earlier of the following:

a) Date of filing the Annual Return or
b) Due date of filing return under section 39 for month of September of the following year, which is 20th of October.

The issue involved here is that the due date for filing GSTR-1 quarterly is 31st October for month of September, which is later than the due date of section 39 return. Hence, ITC related to suppliers filing quarterly return may lapse. Considering the provisions of Rule 36(4) section 16 shall be amendment accordingly.

3. Section 54 to be amended to provide refund **under inverted tax rate structure for tax paid on input services** as well. Tax paid on input services becomes cost in many cases where output tax rate is lower, as refund f the same is not available.

January 20, 2020

TO ALL MEMBERS

RE: UNION BUDGET – 2020-21

Dear Sir / Madam,

The Chamber has arranged to watch the presentation of the Union Budget 2020-21 by the Hon'ble Union Finance Minister Smt. Nirmala Sitharaman to the Parliament in its **Conference Room** (18-H, Park Street, Kolkata-700 071) at **10-45 a.m.** on Saturday, **February 1, 2020**. You are requested to make it convenient to attend.

The Chamber will release comments to the Media on the budget proposals after presentation of the budget by the Minister and your inputs will be much appreciated.

Thanking you,

Yours faithfully,

Dr. Tapa Roy
Secretary General

Ref.No. CCC-5H/20 February 08, 2020

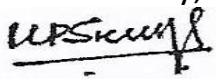
Smt. Nirmala Sitharaman
Hon'ble Minister of Finance
Government of India
Central Secretariat, North Block
New Delhi-110 001

Respected Madam,

On behalf of the Calcutta Chamber of Commerce, we have pleasure to submit our suggestions and comments on Union Budget 2020-2021 for your consideration

With regards,

Yours sincerely,



MADHAV PRASAD SUREKA
PRESIDENT

Encl: as stated.

Suggestions & Comments on Union Budget : 2020-21

- **Startups** - Govt has laudably extended lot of benefits to IMB registered startups in the budget. However only 1 out of 9 startups are registered by IMB. Hence the efforts of policy making and the legislature intent to provide boost to startup ecosystem remain largely unachieved.

  It is suggested to ease and liberalise the process of registration by IMB to extend benefits to many more startup entities.

- **SEZ** - In the backdrop of unutilized excess capacity of SEZ, stagnating exports, boosting make in India drive, it is suggested to extend sunset clause for SEZ units by 3 years from 1.4.20 to 1.4.23 under section 10AA. This will also encourage FDI in setting up captive units by MNCs.

- **Dividend to be taxed in hands of recipient but deduction for Interest paid restricted to 20 per cent of dividend**

The Budget has proposed to tax Dividend in the hands of recipient as per rate applicable to the taxpayer and dividend distribution tax which was payable under section 115-O by the company at the rate of 15 percent (plus applicable surcharge) of dividend declared, distributed or paid has been proposed to be abolished. The general principle of taxing income is that the expenses related to earning any income are allowed as a deduction. Dividend is taxed under the head "Income from other sources" under section 56 of the Income Tax Act and the deductions are generally allowed under section 57.

The new proviso to section 57, inserted in clause 30 of the Finance Bill, 2020 reads as under : "Provided that no deduction shall be allowed from the dividend income or income in respect of units of a mutual fund specified under 10(23D) or income in respect of units from a specified company defined in explanation to in section 10(35) other than deduction on account of interest expense and in any previous year such deduction (for interest) shall not exceed 20 per cent of the dividend income or

income in respect of such units included in the total income for that year without deduction under this section".

In case of dividend income deduction of 20 per cent of dividend for interest paid on amount borrowed and invested in shares or units of mutual fund. Here is a big catch. Suppose you have purchased a share of face value of Rs.10 at Rs.500 per share and you get a dividend of 100 per cent (of face value of share) that is Rs.10 per share. Suppose the person has taken loan at interest rate of 10 per cent then he has to pay interest of Rs.50 in respect of cost of each share per year. In such a case the deduction of only Rs.2 for interest, being 20 per cent of dividend amount, will be allowed under section 57. The balance interest of Rs.48 will be artificially disallowed. This restriction is against the basic canons of taxation of net income, and is totally unjustified and improper. The interest on such borrowed money will be restricted irrespective of the fact whether the investor has obtained loan from a Bank or from a private party. He pleaded for urgently revisiting this artificial restriction. It is apprehended that investors will be dissuaded and they may tend to sell the shares and units and repay the amount borrowed for such investment.

It may be noted that in case of exempt income like dividend exists a provision for disallowance of related expenses under section 14A of the Income Tax Act read with rule 8D of Income Tax Rules and the assessing officers used to make disallowance of full amount of interest as well as expenditure directly relating to income which does not form part of total income and an amount of one percent of annual average of the monthly averages of the opening and closing balances of the value of investment in shares. Sometime these disallowances were many times more than the amount of dividend actually received by the taxpayers and the Courts struck down or substantially reduced the unreasonable disallowance.

It may however be noted that section 57(i) provides that in case of dividends any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend on behalf of the assessee shall be allowed as deduction. However there may be salary expenses, administrative and other expenses in respect of investment made and for earning dividend income and such expenses will not be allowed. The bonafide expenses need to be fully allowed for computing taxable income.

It is time to inculcate tax culture in our country which is possible only if there is a fair tax system. The scales cannot be put against the assessee and in favour of revenue.

- The basic exemption limit should be increased suitably as a Feel Good Factor in view of the fact that the limit of Rs.250000 is continuing since asst year 2015-16.

The inflation as also the lower yield of interest income warrants upward increase of exemption limit.

- The tax slabs under the Alternate Tax Regime should be revised upwards and the highest rate of 30 per cent should apply in case of income exceeding Rs.20 Lakhs.

- The tax, surcharge and education cess together comes to 78 per cent under section 115BBE which apply in case of additions made by A.O. under section 68, 69, 69A to 69D. The additions under these sections are rampant and sometimes made without any material or evidence. Then penalty may be levied. The high rates were introduced after demonetisation by Taxation Laws (Second Amendment) Act, 2016 w.e.f. asst year 2017-18. The rate of tax should be brought back to maximum marginal rate of 30 per cent as was prevailing upto asst year 2016-17.

- Direct Tax Vivad Se Vishwas Scheme, 2020: The introduction of Direct Tax Vivad Se Vishwas Scheme, 2020 is a welcome initiative. We will extend full support. Some clarifications may be considered :

    a) The definition of "disputed tax" should be suitably modified to provide that the taxes paid (including TDS and TCS) will be deducted from the amount to be paid under the scheme.

    b) As the assessee will be required to withdraw the appeal/ writ from High Court/ Supreme Court before filing the declaration under the Scheme, it will be appropriate if the time for filing declaring is fixed at least upto 30th April, 2020 instead of 31st March, 2020.

    c) The Rules and forms should be made in an easy manner to comply.

To,

The President, DTPA

Suggestions which may be incorporated

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Narayan Jain