CALCUTTA CHAMBER OF COMMERCE

PRE-BUDGET MEMORANDUM
ON
UNION BUDGET
2010-2011

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PRE-BUDGET MEMORANDUM ON UNION BUDGET 2010-2011

I. INTRODUCTION OF PERFORMANCE JUDGEMENT MECHANISM (ACCOUNTABILITY)

Majority of Indian citizen have reposed their trust on Congress Party led UPA Government to run the Union Government for another 5 year term. The mandate represent the past performance and future prospect. We at the Chamber feel that in the budgetary exercise future prospect and budgetary allocations are discussed at length and there is no scope of comparison of budgetary allocation of previous period with actual utilization and use of such budgetary allocations. In other words, there should be major thrust on performance along with future prospect. To judge the performance there is a greater need of accountability, which will require the information to Indian citizen about the budgetary allocation, made and actual amount spent under each budgetary heads. Similarly there is a scope of optimum use of limited resources of fund. It may be achieved by blocking the leakage of fund in the course of utilization and distribution. Although there are no documented figures available on record, it has been published in the media (electronic as well as print) that against Rs.1/- spent by the government only 10-15 paisa reaches the needy people at grass root level, where recipients are poor people.

II. INDIAN ECONOMY: GLOBAL MELTDOWN TROUBLE SHOOTING PACKAGE

The overall growth of Indian economy during the last few years had suffered great set back due to global financial crisis which is likely to have an impact on growth of manufacturing and services sector in India. Since fundamentals of Indian economy are very strong and due to inherent production base and demand of purchasing power in hands of the Indian population, Indian economy is expected to overcome the impact of global financial crisis. But, there is urgent need of fundamental supports from Union Government through its budgetary exercise apart from short-term measures prior to budget as proposed hereunder:

(i) Budgetary allocation for infrastructure projects like roads, power, seaport and airport, industrial parks etc. should be given high priority in order to boost the demand for basic inputs like steel, cement, employment generation and so on. Government spending on infrastructure projects through budgetary support will improve liquidity position in the market and it will have the positive effect on the GDP and growth of Indian economy.

(ii) Maintaining employment thrust in all future Programmes would boost growth of Indian economy and minise the impact of present financial crisis. It will lead to rise in domestic demand, which will ultimately increase the agricultural and industrial production and will have a cumulative effect on the economic growth of the country and its citizen.

(iii) Where the industry had employed same or more number of employees in the current year (F.Y. 2008-09) as compared to previous year (F.Y. 2007-08), a fiscal incentive should be provided to industry. This measure will improve the employment scenario of economy and it will lead to check against lay off, production slowdown etc.

(iv) Reserve Bank Reverse Repo Rate should be brought down to 0% so as to provide disincentive to banks to keep its fund with Reserve Bank rather than making it available for lending to Indian industries, trade organizations and individuals and so on.

(v) Fiscal incentive is required to be provided to the industry, which plough back its profit for the development and modernization.

(vi) Petroleum products attract duties more than 40% including State VAT. Customs and excise duty on petroleum products requires adequate rationalization and State VAT should be brought to 4% by bringing an amendment in the CST law in Sec. 14 and petroleum product should be included as a scheduled goods in Sec 14 of the said CST Act, whereby no State Government would be able to charge more than 4% sales tax on sale and purchase of petroleum products as per the existing provisions of CST law.

(vii) The economic reforms are yet to touch the distributive trade. The distributive trade still remains covered by the archaic, obsolete and redundant laws. Surprisingly the industry enjoys the freedom while the distributive trade remains under fetters. It is time that the distributive trade be also allowed to enjoy the benefits of economic reforms. This can be done when all the obsolete and redundant laws such as Essential Commodities Act, Weight & Measures Act, Minimum Wages Act, Shop & Establishments Act and several other such laws are taken out of the statute books and in turn one comprehensive new legislation is framed.

(viii) Large industries mostly governed under corporate sector enjoy the backing of BIFR (Board for Industrial & Financial Reconstruction) under specified circumstances. Commercial banks and lending agencies enjoy the benefits of the SARFESI Act (securitisation) whereby it enjoy unfettered powers to attach the property of defaulters and recovery of their money. On the other hand, small and medium enterprises, traders and individuals have no such backing for recover of its outstanding from debtors.

There is a need for a uniform law governing the default of payments irrespective of the fact that whether it is an individual, firm, corporate company, organization, government agencies and or the government itself. Preferential treatments should be withdrawn and a law be framed for all without any discrimination and differentiation.

(ix) Lessons need to be learnt from the sub prime crisis and the financial melt down taken place in the United States. Interests of millions of bank depositors could have been in jeopardy had not there been provisions in the United States financial systems to protect the depositors interest.

There is a need for a similar provision in the country such as FDIC (Federal Deposit Insurance Corporation) in the United States, which provides protection to the tune of US$ 100,000 per account. A recent amendment by the US lawmakers has increased the amount to US$ 250,000 per account.

The EU Finance Ministers have also agreed to increase the minimum level of bank deposit insurance across 27 EU countries to 50,000 euros up from the floor level of 20,000 euros.

The Government of India needs to create such an organization to protect the depositors saving. A maximum limit of Rs 50,00,000 (Fifty lakhs) per account should be fixed for payment in case of any default by a bank or a financial company, irrespective of the fact that he/she has a savings, recurring, current, fixed deposit and or other deposits. This will go a long way in providing security and building confidence in the minds of public at large in the banking and financial sector. The cost of such a scheme should be borne by the banking and financial sector and should not be passed on to the depositor directly and or indirectly.

III. INFLATION

Presently inflation is measured by whole sale price index where weightage of essential food articles are not appropriately reflected. As a result of which in various food articles price has gone up in the range of 20% - 100% as compared to previous year. Inflation index (WPI) does not reflect such inflations through its index. Recent price rise in food articles and another consumer products are result of demand-supply imbalance and lack of accountability and leakaging Public Distribution System (PDS). Based on various reports we understand that following factors are contributing to demand-supply imbalance in consumer products yielding present inflation.

- Poor supply chain management i.e. lack of proper shortage, lack of proper support to agro based industries (say fruits and vegetables), lack of proper transport facilities – all leading to massive wastage – budgetary incentives can be given
- Lack of R & D – Proper support both fiscal as well as infrastructure to scientists and other technical and intellectuals is required to be given for R & D in the field of agriculture
- Lack of use of technology – Use of satellites for weather predictions, use of proper herbicides and insecticides to mitigate the loss caused by rodents, insects etc., use of advanced machineries and tools both at the farming level as well at the preservation/processing/production levels, use of latest irrigation technologies both

for water preservation as well as proper irrigation etc. budgetary incentives can be given in the form of lower excise duty, tax incentives and subsidy

- Inadequate budgetary support for farming sector – i.e. Irrigation, R & D, subsidized credit facilities to agricultural sector, proper pricing of fertilizers
- Proper fixations of minimum support price for various agri products which should be based on economic logic and not on political considerations and also should not be influenced by lobbyists
- No effective mechanism for proper credit availability and monitoring of loans given to farming sector and moreover the subsidized loans given to farmers should not be on political considerations
- Faulty fertilizer policy leading to inappropriate mix of fertilizer resulting in low productivity
- Fiscal measures in the form of withdrawing excess money in the economy and getting out of a situation where too much money is chasing too few goods

Suggestions

It is, therefore, suggested that the reasons should be removed and proper budgetary policy and administrative measures should be taken to control the inflation and give respite to the general public at large.

IV THRUST ON EXPORTS

A number of times difference of measures and opinions are flashed in media between the Ministry of Commerce and Ministry of Finance over export development measures. It is, therefore, appealed that no measure or policy should be adopted by Ministry of Finance or in the budgetary exercise which put hindrance on the path of exports. There are a number of hurdles in tax refund procedures faced by exporting community. The measures taken so far are half-hearted measures and it had not yielded desired results. The refunds are claimed by exporters under excise, sales tax and exemption are claimed under Income Tax Law. Under each of these three heads there are practical problems which are required to be removed.

V. DIRECT TAX

A. *Income Tax*

1.a) BASIC EXEMPTION FROM PAYMENT OF INCOME TAX

There is a need to provide upward revision of basic exemption to medium income group citizens to provide relief against price rise in consumer products and facing pay cut and job insecurity in private sector.

Category	**Present limit (Rs. in lac)**	**Proposed limit (Rs. in lac)**
Sr. citizen	2.25	4.5
Women below 65 yrs	1.80	3.6
Others (Indv./HUF/AOP/BOI)	1.50	3

1.b) TAX RATE STRUCTURE

In the other Asian countries the prevailing maximum tax rate is 25%. It is, therefore, suggested that the tax rate should be brought down to 25%. Since the government had already reduced pre-custom tariff from 15% to 12.5% par with prevailing tariff rates of other Asian countries in the Budget 2006-07, we propose to reduce maximum tax rate from 30% to 25% to boost the economy, employment and overall tax collection which will give new economic scenario to the country.

Rate of Tax	Proposed income structure
10%	Up to Rs.5 lacs (above basic exemption)
20%	Rs. 5 – 7.5 lacs
25%	Above Rs. 7.5 lacs

The above measure will give relief to a large number of medium income group tax payers and provide boost for small savings.

1.c) RATIONALISATION AND SIMPLIFICATION

Under the head of rationalization and simplification every year there are few proposals and it is the feeling of general public that the tax laws are being made more and more complicated year after year. In fact there has been no simplification of law under the head of rationalization and simplification, rather people are facing difficulties in understanding the real requirement and provisions of the laws. It creates lot of difficulties to tax payers as well as tax gatherers.

1.d) Our Chamber welcomes the assurance of Union Finance Minister to introduce income tax return form **SARAL II** shortly for simplification in tax compliance by tax payers. A discussion on this issue is awaited.

1.e) While encouragement for investment link tax incentive for specific business is welcome, one of the object specified in new Sec. 35AD will hardly be available for utilization by even high income group tax payers, i.e. laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being integral part of such network. Like other clauses (a) Cold Chain Facilities (b) warehouse facilities, simple business would have been defined which could be made use for greater development and utilization of investment linked tax incentive.

1.f) It has been endeavor of the government to introduce more and more retrospective amendments to undo the apex court's and High court's decisions. While the government has constitutional power to introduce retrospective amendments in the tax laws, it should be used sparingly and under extraordinary circumstances only and not the way it is being used almost every year.

2.a) RATIONALISATION OF PROVISION: SECTION 14A OF THE INCOME TAX ACT

Method for determining amount of expenditure in relation to income not includable in total income.

The principle of disallowing the expenditure incurred by the assessee in relation to exempt income is acceptable. But the mode of its implementation and bringing indirect expenditure into the network of disallowance is clearly contrary to the main principle for which this provision was enacted. The Central Board of Direct Taxes had provided Rule 8D in exercise of its power given U/s 14A(2) of the Act.

A number of controversies has arisen resulting spate of litigation and appeals pending before different authorities including ITAT and High Courts. This is a result of faulty drafting and lack of clarity and injustice.

Suggestion

It is suggested that all present controversies should be settled in a judicious and balanced manner and provisions should be made simple and effective so that there is no injustice and there is no scope of litigation.

Therefore, Rule 8D requires a total overhaul.

2.b) CAPITAL GAINS

Income arising out of sale of shares and securities requires simplification.

Till 30th September, 2004 the income assessed under the head capital gains relating to quoted shares of Indian Companies were charged to income tax at normal rates of tax if the same was short term (held for a period of less than twelve months) and nil if the said shares had been acquired on or after 1st March, 2003 and held for a minimum period of twelve months provided that such shares were included in BSE 500. In case of shares held for a minimum period of twelve months, if such shares were outside the BSE 500 shares, then such shares were charged to income tax @ 10 %. There was no STT payable by the investor.

Because the short term capital gains were taxed at normal rates of income tax, Instruction No. 1827 dated 31.08.1989 was being resorted to in a very limited way by the Assessing Officers.

After 30th September, 2004 the income assessed under the head capital gains relating to quoted shares of Indian Companies were charged to income tax at 10%, if the same was short term (held for a period of less than twelve months) and STT has been paid by the investor and nil, if the said shares had been held for a minimum period of twelve months and STT has been paid by the investor.

Now since short term capital gains are chargeable to income tax at special rate of 15 %, and long term capital gains are not chargeable to tax, an issue is being raised as to whether the transactions of buying and selling of shares are assessable as capital gains or assessable under the head profits and gains from business or profession. This has created a lot of confusion among the Assessing Officers, the investors, the assessee and the tax advisors. This has also given a lot of discretionary power to the Assessing Officers and because of such discretionary power, the assessees as well as the tax advisers strongly feel that the Assessing Officers may unjustly interpret the said Instruction No. 1827 and frame whimsical and arbitrary assessment orders which would result in a lot of litigation and complicate the issue further instead of simplifying the same. Circular No. 4 of 2007 issued by the CBDT has instead of clarifying the issue further complicated the issue.

Therefore, it is felt by all concerned that a clear cut instruction which is judicious and within the four corners of law is required on this count in order to avoid unnecessary litigation and arbitrary assessments and promote transparency, faith of the tax payer towards the intent of the Hon'ble Finance Minister and the harmonious relationship between the assessee and the income tax department.

Suggestion

- **Where an assessee has regularly been treating its buying and selling of shares together with delivery as investing activity and also classifying the shares in hand at the year end as investments, the assessing officer should accept the profit or loss on such transactions as profit or loss under the head capital gains.**
- **In case of non corporate assessee, where the annual accounts are not drawn as per schedule VI of the Companies Act, 1956, if in the past the assessee has been treating any profit or loss arising out of purchase/sale of shares as capital gains/loss, any profit/loss arising out of pending assessments should be assessed under the head capital gains.**
- **For fresh purchases to be made, it should be made mandatory on the part of the assessee to declare at the time of purchase whether such purchase has been made for investment purpose or trading purpose to his share broker. An additional column should be added to the contract note issued by the broker which should mention either** I **(investment) or** T **(trading) and such contract note declaration should be treated as final for deciding whether any profit on sale of such shares is assessable under the head capital gains or under the head business or profession.**

2.c) <u>CAPITAL GAINS (SEC.50C)</u>

Section 50C provides that the consideration amount of sale in land or building or both shall be deemed to be the value on which the stamp duty is charged by the state government for the purposes of transfer. This amendment is made as a prelude of deletion of Chapter XXA, regarding acquisition by Government, in case of understatement of consideration by more than 15%. Similar provision proposed by Finance Bill of 1998 clause 25 providing amendment to Section 48 by insertion of a provision, by which the transfer consideration

shall be deemed to be the value on which the Stamp Duty is paid. These proposed provisions were in view of the facts that the state government fixes the Stamp Duty Value at a high pitch devoid from market value for registration on the basis of Local Authorities demarcated blocks/wards and not on the basis of Prime Property, Secondary Property, Residual Property etc. The Stamp Value fixed for a property at 120ft. wide road is the same as that for 80ft. or 40ft. wide road in the block/ward. Likewise, the Stamp Duty Value for the corner plot is the same as that for a plot with small opening on the road or a tandem plot or a large road facing the plot. The value for a vacant property and an old tenanted property is also the same and no consideration is made of any restrictive rent laws or the amount of rent. At present, the valuation of Stamp Duty is illogical, irrational and unscientific.

The middle class is badly hit, who sell off properties as a last resort in case of unavoidable need. Real Estate dealers are out of the purview of the provision as in their case it is business profit and section 50C is not applicable to them as it is applicable only for calculating Capital Gains.

Suggestion

The newly inserted provisions of Section 50C for taxation of capital gains on transfer of immovable property on 'Notional basis' are draconian in nature. Earlier, Section 52 was on similar line and after the Supreme Court Judgment in K. P. Verghese v. ITO (1980) 131 ITR597, 612 (SC), the Govt. had rightly repeated the same by Finance Act, 1987. Reintroduction of an illogical concept has unleashed the era of irrationality and there is necessity to restore rationality and simplification in the administration of the tax laws. It is suggested that Section 50C be repealed forthwith with retrospective effect.

3. A) <u>TDS – SECTION 194C</u>

A new section 194C has been substituted w.e.f. October 1, 2009. Following suggestions are made therein.

a) A financial limits for petty cases i.e. Rs.20,000/- for single payment or credit and Rs.50,000/- for aggregate during the financial year was fixed in old section. Since 1982 and 10/2004 respectively the said limit should be enhanced to Rs.50,000/- and Rs.1.50 lack respectively.
b) In case of sub-contractors, the earlier rate of 1% other than individual/HUF sub-contractors 1-2%. It should remain 1%. Similarly in the case of advertising contracts also other than individual/HUF sub-contractors the rate has been enhanced from 1% up to 30th September 2009 to 2% from October 1, 2009. It should be brought back to 1%.

3.B) TDS CREDITS IN THE HANDS OF DEDUCTEES

The endeavour of tax department to introduce paperless TDS Certificates are yet to achieve its desired goal, as there are mismanaging of data between TDS Certificates issued by

deductors, TDS statement uploaded CONTIN system and bank payment details, PAN Nos. of the deductees. In every mismanage cases PAN wise deductee ledger does not show TDS credits. In all such cases deductees are most sufferer where the default lies in majority of the cases either in the hands of deductors or in the hands of bankers or in the CONTIN system itself.

Suggestion

In view of the above chaotic situation, it is suggested that so long the CONTIN and TDS system is not full proof, TDS Certificates issued by the deductors which are furnished by the deductees in the tax assessment should be given due cognizance and refund claims based on such TDS Certificates submitted in original in the office of the Assessing Officers should be disposed off on a time frame basis to remove tax payers grievance.

6. **TIME LIMITS**

There are several provisions of Income Tax Act wherein no time limit has been prescribed, so it is suggested that the law should prescribe the time limit for passing orders under the Income Tax Act. The examples of such provisions are –

- **S. 171**: Claiming partition of a Hindu Undivided Family**.**

- **S.179**: Dealing with recovery of taxes from directors of a private company – period should be linked to the date of order determining the company's tax liability.

- **S.195**: order for deducting no tax or tax at a lower rate than prescribed. In our opinion, the law should prescribe a maximum period of 30 – thirty days, within which the application should be disposed of and in case the application is rejected, the Assessing Officer should pass a speaking order after providing a reasonable opportunity.

- **S.281**: Issue of clearance certificate, if an assessee applies for the same.

- **S.80-G:** Issue of certificate on receipt of the application for grant of a certificate in favour of Charitable Trusts.

Suggestion

- **For giving effect to the order of an Appellate Authority i.e. CIT(A), Tribunal, High Court or the Supreme Court, the assessee has to continuously keep knocking at the door of the Assessing Officer. The law, in our opinion, should make it obligatory on the Assessing Officer to pass an order within three months of the receipt of the order, either from the Appellate Authority or the assessee whichever is earlier.**

- **At present, no time limit has been prescribed for assessment of TDS Return submitted by the assessee. Accordingly, such return is taken up for scrutiny**

- **after expiry of 6-8 years period and in many cases even beyond the above referred period. Since there is time limit for completion of income tax and wealth tax assessment, which is 21 months from the end of relevant assessment year, similar time limit should be fixed for completion of assessment of TDS Return / statements also.**

B. NEW PROPOSALS

1. **INCOME HEAD: SALARY**

Standard Deduction was used for computation of income under the head 'salary' till the implementation of the Finance Act 2005. It had caused hardship to the large number of tax payers, especially in the income range of Rs. 1.5 lac to Rs.5 lacs.

Suggestion

It is, therefore, suggested that the law of Standard Deduction should be re-introduced for computation of income under the head salary.

2. ACCOUNTABILITY OF THE ASSESSING OFFICER

Suggestion

It is suggested that the Assessing Officer should be made accountable for delay in granting refunds, giving effect to Appellate Orders, carrying out rectification, issue of certificates for lower deduction of tax, preparation of survey reports.

3. SECTION 143

In practice the Assessing Officers make unwarranted, uncalled for additions to the returned income or disallow claims made in the return of income. On many occasions the assessees have had no opportunity to make proper representation. This results into unnecessary litigation.

Suggestions:

♦ **It is, therefore, suggested to enjoin upon the Assessing Officers to communicate the nature and quantum of additions/disallowances to the assessees, Finance Act 2002 had introduced a concept of limited scrutiny in which, the Assessing Officer, if has reason to believe that an assessee has made a claim of any loss, exemption, deduction, allowance or relief which is inadmissible, is empowered to issue notice specifying claims and calling upon the assessee to produce evidence and particulars in support thereof and making an assessment of total income of loss limiting himself to the claims set out to verify.**

The Assessing Officer has enough power to verify the correctness of the claims made by the assessee in the return of income. Further, such additional discretionary powers to the Assessing Officer are unwarranted and cause unnecessary harassment

to the assessees. It would also open doors for unhealthy practices and protracted litigation.

- **It is, therefore, suggested that provision introducing the concept of limited scrutiny be dropped by a further amendment to Section 143.**

4. INCOME TAX APPEALS (SEC.246A)

- As per existing rule, appeal filing fees is based on the assessed income. It is suggested that appeal filing fees should be determined on the basis of the difference between Returned income and Assessed income. The appeal fees incase of penalty orders should be linked with income figures. The time limit is prescribed for disposal of appeals but if the appeals are not disposed of within the time allowed, then what course is to be taken is not clear.

Suggestion

It is suggested that specific period should be given for disposal of appeals.

- **Section 246A introduced with effect from 01.10.98 has denied right of appeal against order under Section 201 and also does not provide right to appeal against levy of interest under Section 234A, 234B, 234C and 220(2).**

Suggestion

It is suggested that the right of appeal should be granted against all orders passed under the Act whereby the right to levy or refusal is challenged.

C. AMENDMENTS IN THE EXISTING PROPOSALS

1. AGE LIMIT AND NIL TAX SLAB ETC. FOR SENIOR CITIZENS

The Government had provided tax advantages to senior citizens. Following the government retirement age and retirement age prevailing in professionally managed corporate sector, it is proposed to reduce the threshold age for tax exemption purposes from 65 years to 60 years. With the proposed reduction, senior citizens would be able to avail of large tax benefits on instruments like the Senior Citizens Savings Schemes on the bank deposits.

Moreover al the National Insurance Companies and other insurance companies had increased premiums on medical insurance payments in recent past.

Suggestion

It is suggested that, considering the increase in cost of living and medical treatment, the basic limit of exemption for senior citizens should be increased from Rs.2,25,000/- to Rs.4,50,000/- and for deduction U/s 80D for Medical Insurance Premium, the limit should be increased from Rs.15,000/- to Rs.25,000/-.

2. TDS LIMITS

Suggestion

Threshold limit for Tax Deduction at Source (TDS) for payment of interest should be increased from the current level of Rs.5000/- to Rs.15000/- and a special limit should be provided especially to benefit Sr. citizens to Rs.30,000/-. The Chamber feels that if the threshold limit is raised, people would have the option to receive the entire interest amount without TDS and pay to the revenue department at their convenience. It would specially benefits Sr. citizens whose maximum income is dependent upon return on investment. Obtaining a certificate from the Assessing Officer for no or lower TDS and getting final return thereafter both have become cumbersome process to be followed by the taxpayers.

3. LEVY OF SURCHARGE AT 10%

Surcharge levy on corporate and non-corporate assessees has reduced the impact of 30% tax rates imposed in Finance Act. The effective tax rate for the corporate and for non-corporate, where aggregate taxable income exceeds Rs.10 lacs on 30% slab, is 33.99 % (considering surcharge @ 10% and EC @ 3%), whereas such surcharge is levied @ 2.5% on non-domestic companies.

Suggestion

It is, therefore, suggested that this surcharge should be abolished in all the cases or alternatively it should be levied uniformly on all class of assessees. Levy of education cess and Higher Secondary Education Cess being additional surcharge requires re-consideration.

4. DIVIDEND DISTRIBUTION TAX

Suggestion

Dividend Distribution at present is taxed @15%. In order to boost investment scenario and industrialisation and corporatisation of business entities, it is suggested that stage has come where Dividend Distribution Tax should be abolished, or alternatively it should be slashed to 5%.

5. ENHANCEMENT OF EXEMPTION LIMIT FOR MINOR'S INCOME CLUBBED WITH

THE PARENT

S.10(32) provides for an exemption of clubbed income to the extent of Rs.1,500 per child. This limit was set by the Finance Act, 1992. This limit is too meager and an upward revision upto Rs. 15,000 per child is over due.

Alternatively, a deduction for educational and medical expenses incurred by parents on minors be allowed upto Rs.15,000 per child. This deduction/exemption could be limited to two children.

6. MINIMUM ALTERNATE TAX (MAT) U/S 115JB

On introduction of MAT the rate of tax was 7.5% of book provides which has been increased to 10% from A/Y 2007-08. To overcome the financial crisis due to global melt down, it is proposed that the rate should **be brought back to 7.5%** without application of Surcharge and E.C. thereof.

7. DEEMED DIVIDEND [Sec 2(22)(e)]

Income Tax Act: Payment of closely held company by way of loan to the share holders.

Under the above provision loans by a closely held company to specified share holders are treated as dividend distributors to the extent of accumulate profit of the company subject to fulfillment of certain condition. This provision was enacted basically to overcome the situation where the share holders, who are liable to pay tax on dividend received, would avoid payment of tax liability by not receiving the share profit from the closely held company by way of dividend, but they would prefer loan to avoid tax liability. At present the dividend is exempted from tax in the hands of shareholders u/s 10(34) of the Income Tax Act, where the company has paid Dividend Distribution Tax U/s 115-O. The closely held company is a glorified partnership. A partnership firm has no tax liability on distribution of profits amongst the partners.

Thus the basic scenario and presumption has changed as on date from the date, when the provision was enacted. Considering the present position there are two alternative suggestions made by us.

Suggestion No. 1: If the loan is provided by the closely held company to its share holders carrying interest not less than rate charged by SBI prime lending rate (PLR), dividend should be exempted in such cases. OR

Suggestion No. 2 : The company providing loan to the share holders should be charged dividend distribution tax in the place of the share holder paying tax at full rate of tax.

8. INTEREST ON HOUSING LOANS FOR SELF OCCUPIED PROPERTY

Till about 1984, the entire amount of interest paid on a loan taken for buying or constructing a house was allowed as a deduction. This was amended to limit the deduction only to cases where the house was given on rent, and in the case of a self-occupied house, the deductions was only upto *Rs.30,000/--* per annum.

During the Budget of 2001-2002 the limit for deduction of interest paid on loans for acquisition or construction of a residential house was increased to Rs.1,50,000/- if the interest is payable on capital borrowed after 1.4.1999 and the acquisition/ construction of the property is completed within 01.04.2003. The limit for deduction of interest in respect of such a house, where the money was borrowed before 1.4.1999 continued to be

Rs.30,000/-.

It is necessary to remove the disparity between the old loans and the loans taken after 1.4.1999, as both are utilized for the construction / acquisition of house property. This is a very big discrimination to a section of the public. It is, therefore, suggested to remove the time limit and ceilings on the deduction of interest paid on loans for acquisition / construction of a residential house and the benefit increased to Rs.3,00,000/-

9. SECTION 30 & 31

Amendment has been made to Sections 30 & 31 by Finance Act, 2003, which governs allowance of current repairs of buildings, machinery, plant and furniture etc. The amendment of adding the words "shall not include any expenditure in the nature of capital expenditure" is not going to serve the purpose for which the amendment has been proposed. None of the courts have held that the expenditure allowed under these two Sections, although in the nature of Capital Expenditure, are still allowable rather they have held it to be a revenue expenditure. The amendment in the present form will be generating lot of litigation.

Suggestion:

Hence the amendment should be re-worded in a manner that the intent for which the amendments have been made could be achieved. The following is suggested to be added as an Explanation. "For this section, Capital Expenditure shall mean to include "any expenditure "incurred for enhancing substantially the life or the capacity or the performance of the building, plant, machinery and Furniture in respect of which such expenditure has been incurred".

10. SECTION 32: ADDITIONAL DEPRECIATION

Suggestion

- **Since the Depreciation rates have recently been streamlined, no further changes are called for to these rates.**

- **A provision for additional depreciation is always welcome. However, in order for the amendment to achieve its objective of accelerating economic growth of the capital**

goods industry, it is necessary that it is allowed as truly additional and not just as an advance deduction.

Additional depreciation, in true sense, will be allowed to new entrepreneurs & entrepreneurs going for expansion only when such additional depreciation does not reduce closing written down value (WDV).

Otherwise, it will not amount to additional depreciation rather it will be preponment/acceleration of depreciation claim. In the era of globalization and age of competitiveness, Indian Industry needs modernization of their plant where there

may not be substantial of installed capacity. Under this consideration, our Chamber feels that benefit of this additional depreciation should be extended to modernization in order to accelerate industrial growth & growth of GDP. In line with the earlier provision of investment allowances, the benefit of additional depreciation should be granted to second hand imported machinery to first user in India.

11. DEPRECIATION ALLOWABLE U/S 32 (1) (iia) OF THE ACT

Sub Section (iia) in Section 32(1) provides further depreciation at 20% of the cost of plant and machinery installed after 31st March 2005 by an assessee engaged in business of manufacture or production of any article or thing. Such additional (further) depreciation is allowed as deduction under clause (ii) of Sec. 32(1).

Suggestions

- **The rate of additional depreciation under Sub Sec. (iia) of Sec. 32 (1) should not be reduced to half, where the Plant & Machinery are put to use under substantial expansion for less than 180 days. Alternatively, it should be specifically provided that balance amount of additional depreciation should be allowed in immediately subsequent year.**

- **The rate of depreciation as per Income Tax Rules should be amended at per with schedule of depreciation under the Company Act 1956 in respect of depreciation charge on written down value (WDV).**

12. SECTION 36(1)(III)

A provision has been added under the existing provision to disallow interest paid on capital borrowed for acquisition of new assets for expansion of existing business or profession. In other words, the said amendment is discouraging capacity expansion and extension of services by the persons who are in business. Under the existing law as interpreted by several decisions of Hon'ble Supreme Court & High Courts, interest is allowable in respect of capital borrowed for new assets for expansion of existing business.

13. EXPENDITURE IN CASH IN EXCESS OF RS.20000 - SECTION 40A(3) AND RULE 6DD(J)

A. The Finance Act 1995, amended the provisions of Section 40A with effect from A.Y. 1996-97. According to the amended provisions, disallowances in respect of expenditure incurred by the assessee otherwise than through the banking channel is to be made to the extent of 20%. The justification for this amendment was to reduce the harshness of the law, which would automatically also reduce the litigation. By Income Tax Fourteenth Amendment Rules, 1995 erstwhile Rule 6DD(j) has been omitted with effect from 25-7-1995. On account of this, in all genuine cases also, the Assessing Officer would be under an obligation to make disallowance, once the payment in excess of Rs.20,000/- is not

made by crossed account payee cheque/draft and if the case is not covered within the exception provided in Rule 6DD(a) to (m). This would cause unavoidable hardships and sometimes, unbearable & unfair financial burden to the assessee. In view of the above, if the object is to reduce the discretion of the Assessing Officer, the same could be achieved by reintroduction of the erstwhile Rule 6DD(j) so that the harshness of the provisions can be reduced and the possible amount of disallowance will become insignificant which will automatically reduce the litigation arose on the applicability of Section 40A(3). In any event, to take care of the unintended hardships which the assessees are likely to face on account of the omission of the said Rule, it would be imperative to reintroduce the erstwhile Rule 6DD(j) in a modified form so that genuine and deserving cases as mentioned above are not hit by the above provisions for disallowance.

B It is proposed that this allowance of any expenditure incurred in respect of cheque payment is made by a sum exceeding Rs.20,000/- otherwise than by an A/c payee cheque or bank draft should provide specific explanation in Rule 6D of the Income Tax Rules as under where the identity of the payee is established and due to circumstances beyond the control of the payer. It is not possible to make payment by an A/c payee cheque or draft. The Assessing Officer should be empowered to consider and allow such demands without any disallowance of expenditure as per Sec. 40A(3) of the Act.

For example, payments are made to truck drivers towards transportation charges exceeding Rs.20,000/- and the truck drivers have to buy fuel and lubricants and pay for their truck maintenance for long trip journey at the originating station. Similarly, where a previously issued A/c payee cheque is dishonored, and the payer wants to avail service or make payment of purchase of goods, assessee has no alternative than to pay by cash. There may be similar various other situations which may be considered by the Assessing Officer as per specific provision which may be inserted in Rule 6D.

Suggestions

A limit of Rs.20,000/- in respect of expenditure, U/S 40A(3), loan/deposit receipts and re-payment U/S 269SS and 269T respectively were fixed long back. According to current price index and trend of business, trading and industry, a re-look is required for the said unit. We, therefore, suggest this limit should be enhanced to Rs.50,000/-.

14. RESTRICTION ON REMUNERATION AND INTEREST TO WORKING PARTNERS IN ASSESSMENT OF PARTNERSHIP FIRMS (SECTION 40(B))

A ceiling has been placed on interest payable to partners but no such conditions or ceiling appears in case of company assessee. While on payment of interest by a company assessee, the company need not pay any tax but the partnership firm is liable to tax at 30%+surcharge, where rate of interest is more than 12% p.a. and at the same time receiving partners pay tax thereon in their personal taxation. Remuneration payable to working partners is subject to restriction as provided under Section 40(b) of the Act.

Suggestions

It is suggested that such restriction should be modified as per company law as is applicable to remuneration to Directors in case of closely held company which is far more than the existing provision of Section 40(b) of the Act.

15. SECTION 44AB

Increase of limit in turnover / gross receipt in case of audit of accounts u/s.44AB: At present, audited accounts of persons carrying on business or profession are required u/s.44AB if the gross turnover/gross receipts exceed Rs.40 Lakh in case of business and Rs.10 Lakh in case of profession.

Suggestions

(i) These limits have become outmoded and considering the effect of inflation it is suggested that these limits may be enhanced as per cost inflation Index.

(ii) A print copy of Tax Audit Report along with Statutory Audit Report in the case of corporate and Co-operative Societies assesses should be required to be furnished in the office of the Assessing Officer within return filing due date in order to stop misuse of paperless return regime by dishonest tax payers.

16. SECTION 44AF

Reduction of estimating income from current business in goods or merchants u/s.44AF: At present, the income from such business is estimated at 5% of the total turnover below Rs.40 Lakh, which is very high.

Suggestions

It is suggested that the rate be reduced to 3% of the turnover.

17. SUBSTITUTION OF COST OF ACQUISITION OF CAPITAL ASSETS-S-55(2)(b)(i) and (ii) - shift date from 1st April 1991 to 1st April. 2001.

Under S.55(2)(b)(i) and (ii), where a capital asset was acquired by the assessee or the previous owner prior to 1st April 1981, the assessee has the option to substitute the fair market value of that asset as on 1st April, 1981 in place of the cost of the asset. This date of 1st April 1981 was substituted for 1st January 1974 in 1992. As about 15 years have elapsed since this change, and since there has been a substantial increase in prices of assets in account of inflation since 1981, it is suggested that for this purpose, on account of inflation, the date Of "1st April 1991" be replaced by "1st April 2001".

It is felt by our Chamber that because of deemed income provision introduced under Sec. 56(2) of the Act, middle class tax payers would be hardly hit much because of the fact that the market value normally rise after agreement to purchase a flat is executed and during the construction period of 3 years and the conveyance deed is registered on the

basis of market value on registration date and not on the date of agreement to purchase. Under these circumstances all the flat purchasers would be liable to pay tax due to the said tax proposal. We are sure that this is no the intention of Government.

Definition of the term relative should be taken from the definition of the same term under the Companies Act provided in Section 6 of the Companies Act schedule IA.

18. SECTION 72

At present under the provisions of section 72 of the Act, carried forward business loss can be set off against profits and gains of business or profession carried on by an assessee in subsequent assessment years upto 8 years. Where the capital asset forming part of block assets in respect of which depreciation has been allowed is sold and there is any surplus (either because the block of assets ceases to exist or because the consideration received exceeds the value of block), such surplus is at present regarded as "short-term capital gain".

Suggestions:

- **It is suggested that the carried forward business loss should be set off against such short-term capital gain in subsequent assessment years.**

19.A) EXCLUSION FOR LONG-TERM CAPITAL GAINS AND DEDUCTION U/S 80IA/80IB WHILE COMPUTING BOOK PROFIT UNDER MAT

MAT is payable by companies even on long term capital gain, though the same might not be taxable because of indexation or investment in approved securities in accordance with the provisions of sections 54EC/54ED of the Act. Earlier, profits and gains derived by an industrial undertaking from the generation/distribution of electricity was excluded in arriving at the income liable to minimum alternative tax u/s 115JA of Income Tax Act. As a result of the new provisions contained in Sec.115 JB of the Act, Companies operating windmills and deriving income from generation/distribution of electricity are affected adversely.

Suggestions

- ♦ **It is therefore suggested that profits derived by an industrial undertaking from the generation/distribution of electricity and other infrastructural development project be excluded from the computation of "book profit" as defined u/s 115 JB of the Income Tax Act.**

- ♦ **Section 115JB should be amended to provide for exclusion of long term capital gains and deduction allowable under section 80-IA/80-IB in computing Book Profit for the purposes of levying MAT.**

- ♦ **Effect of long term Capital Gain MAT calculation should be removed, since it is discriminatory between corporate and non-corporate assessees.**

- **The benefit to any undertaking, which develops, develops & operates or maintains & operates an Industrial Park is available where the Industrial Park is notified upto 31/03/2009 only. The period should be extended further upto 31/03/2015**

- **<u>The procedural norms for obtaining approval/notification from Commerce Ministry & CBDT should be done simultaneously.</u>**

- **Under the Automatic Route of Approval, the minimum number of Industrial Units should be reduced to 10 Units from present requirement of 30 Units.**

- **More activities should be covered in the list of eligible activities as provided in the National Industrial Classification, 1987 Code issued by CSO.**

19.B RATE OF TAX UNDER MAT

At the time of introduction of MAT provision, the rate of tax was introduced at 7.5%. It has been gradually increased at different steps to 15%. It is suggested that the MAT should be brought back to 7.5% which was originally introduced.

We suggest that the MAT should be brought down to 7.5% in place of proposed 15%. At the same time there is a room for **removal of surcharge on corporate taxpayers** as well. Corporate tax in India is considerably above the global average. The average tax rate globally stands at 25.9% in 2008 while that of India stands at 33.9% (inclusive of 10% surcharge and 3% e.c. etc). It is felt by us that even by removal of surcharge the total revenue collection will not fall, since the growth in economy would compensate loss on removal of surcharge by way of enhancement in tax collection.

19.C <u>MAT CREDIT AND INTEREST UNDER SECTIONS 234A, 234B, 234C</u>

a) The Department is not taking into account the tax credit available to companies under section 115JAA, while calculating interest payable under sections 234A, 234B and 234C of the Act. The tax credit allowed under section 115JAA is certainly in the nature of advance tax and due credit should be given for the same while calculating interest payable under sections 234A, 234B, and 234C for alleged shortfall in payment of advance tax. In the alternative, MAT credit should go to reduce the 'tax payable on total income' or the 'assessed tax' and only thereafter the calculation of interest should be made. Although the Assessing Officers are adjusting the MAT Credit to determine the tax payable or refund due, they are not adjusting the same for calculation of interest. This has lead to avoidable litigation.

Suggestions

- **The credit of MAT paid in earlier years and allowable for setoff u/s 115JAA should be allowed as advance tax paid for computing interest payable u/s 234A, 234B, 234C of the Act. Alternatively the amount of MAT credit should be reduced from tax payable to determine assessed tax for levying interest under aforesaid sections.**

- **Where a corporate assessee is not required to pay tax under normal computation but tax liability is established under MAT provision, no interest under Section 234B and 234C should be levied. It is, therefore, suggested that the charging provision should be amended accordingly.**

20. REINSTATEMENT OF EXEMPTION UNDER SECTION 80 IB (10)

Reinstatement of Exemption under Section 80 1B (10) with suitable modifications to be made (as annexed).

21. <u>DEDUCTION ALLOWED U/S 80C OF INCOME TAX ACT TO BOOST INVESTMENT</u>

At present a limit of Rs.1 lac has been prescribed u/s 80CCE of the Income Tax Act for allowing deductions to the tax payers u/s 80C, 80CCC, 80CCD of Income Tax Act.

Suggestions

In order to boost investment and savings, it is suggested that the existing limit of Rs.1 lac should be increased to a minimum of Rs.2 lacs.

22. <u>EXEMPTION OF EXPORT EARNINGS</u>

The Real Estate Industry is earning large amount of Foreign Exchange and has the potential to earn even larger amount of Foreign Exchange if it is given benefits similar to those given to other business operations earning foreign exchange. The deduction for the Real Estate Section should be pari passu with Section 80 HHC, 80HHD, 80HHE, 80HHF (on the line of exemption to earning in hard currency for Hotels, Travel Agencies, etc.)

The sale of properties to NRIs to be treated as Deemed Export so that more and more Developers will find it attractive to woo NRIs to invest in Real Estate in India.

23. TAX ON LONG TERM CAPITAL GAIN

The definition of long term asset in the case of house property should be a period of 'more than one year' as has been done in the case of investment in shares and the gain arising on transfer of house property being long term asset should be only @ 10% along with benefits of indexation.

24. TAX ON CAPITAL GAIN - S.112

The reduction in the rate of tax on long term capital gain on listed securities and units to the lower of *10%* on the gain before giving effect to cost indexation or 20% on gain computed after giving effect to cost indexation is welcome. However, the applicability of this provision should be extended to gains arising from all assets, and should not be restricted only to units and listed securities. The tax rate of 20% on long-term capital gains was introduced at a time when the maximum marginal rate of tax was 50% With the adoption of lower tax regime and the reduction of maximum marginal rate of tax to only *30%,* it is desirable to reduce the tax rate on long-term capital gains from 20% to 10% in all categories.

25. POWER TO INCOME-TAX AUTHORITY TO IMPOUND THE BOOKS AND OTHER DOCUMENTS AND RETAIN THE SAME IN HIS CUSTODY - SECTION 133A

Section 133A has been amended to allow the income-tax authorities during the course of survey, to impound the books and other documents and retain the same in his custody. Such provision is unwarranted and may lead to harassment of the assessees during the course of survey.

Section 133A provides for impounding and retaining in custody of Books of Accounts & papers in course of survey operations for such period, as they may think fit. This provision will again bring back Inspector Raj, harassment and corruption. This provision tantamount to a mini search operation u/s. 132 limited only to the books of accounts and other documents. Such impounding of the books of accounts including current books of accounts will be hampering the business of assessee and he may put to great loss

monetarily as well as in goodwill as he will not be able to pursue his debtors and pay his creditors in time. Impounding of the current books of accounts means a temporary closure or set back to the business of the assessee. It is a very harsh measure.

Suggestions:

- **It is, therefore suggested, that the survey should be conducted only after obtaining the approval of the Chief Commissioner of the Income-tax. For the purpose of Section 133A, the term 'income-tax authority' also includes Inspector of Income-tax**

whereas under Section 131 of the Act, the Inspector of Income-tax does not have same powers as are vested in a court under the Code of Civil Procedure, 1908 and powers to impound books of accounts and other documents under section 131 of the Act are not vested upon him. Hence, conferring these powers to the Inspector of Income-tax under section 133A would be incorrect and unlawful.

- **This explanation to Section 133A be amended to exclude Inspectors of Income-tax from the term 'income-tax authority'.**

- **It is suggested that instead of impounding and retaining in custody the books of accounts, the officer may sign each page of the books of accounts and or take Xerox**

copies of such books of accounts and ask the assessee to sign the Xerox copies. Alternatively, before removing the books of accounts, the Officer should allow the assessee to get the books of accounts & other papers impounded xeroxed so that the assessee can continue his business with the help of the xerox copies.

26. SECTION 147, 148, 149

Under the existing provisions of Section 147 of the Act, an Assessing Officer can reopen the assessment at any time within a period of 4 years from the end of the relevant assessment year, even where the assessment u/s 143(3) or u/s 147 of the Act has been for the relevant assessment year. If the assessee has made full and true disclosure of all material facts necessary for the purpose of assessment of his income, the Assessing Officer should not be allowed to reopen the assessment u/s 147 of the Act without bringing on record any fresh facts, evidences or reasoning in support.

Suggestions

- **If there is no change in facts and circumstances in the case and it is the case of mere change of opinion, the Assessing Officer should not be allowed to reopen the assessment u/s 147 of the Act after expiry of one year from the end of the assessment year. Inserting second proviso to Section 147 of the Act may make the amendment to this effect. Section 148 has been amendment doing away with the minimum period of 30 days within which an assessee is required to submit his return of income for the purpose of reassessment. With this amendment the period within which an assessee is required to submit his return of income for the purpose of reassessment will be left to the discretion of the assessing officer.**

- **Time limit of not less than 30 days should be provided for filing return of income. Printed form of notice under Section 148 should be amendment in line with this section.**

27. SECTION 154 (RECTIFICATION OF MISTAKES)

Section 154 has made it obligatory for the concerned income-tax authority to pass an order within a period of six months from the end of the month in which an application for rectification is filed by assessee. Nothing has been stated about what is the remedy available to the assessee if such authority does not pass any such order within the stipulated time. It may create lot of problems and confusion if nothing is spelt out about the fate of the application in such circumstances.

Suggestions

It is suggested that suitable explanation/clarification to section 154 may be provided in the Act to remove the doubt/confusion about the fate of the petition under Section 154 which remains indisposed beyond six months.

28. CAP ON INTEREST UNDER THE DIRECT TAX LAWS

Under the Act, the assessee is liable to pay interest for shortfall in payment of advance tax and late filing of return of income. The interest liability is computed based on the assessed tax. At the time of assessment, the assessing officer may make an addition to the returned income resulting in difference between the returned income and the assessed income. Such additions to the income are disputed additions and agitated by the assessee. There are instances of assessees succeeding in the first/second appeal and losing before the Courts. Finally, if the assessee does not succeed before the Courts, the interest burden under S .234B is heavy. At times, it is more than the amount of addition or income earned by the assessee. Therefore, it is suggested that the law should provide for a cap on the amount of interest payable by the assessee upto a maximum of 50% of the tax liability.

29. INTEREST UNDER SECTION 234A

Under section 140A of the Act, an assessee is liable to pay tax on self-assessment. If there is any delay in furnishing the return of income, interest is payable on the amount of tax. In cases where the tax on self-assessment is paid under Section 140A before the due date for filing return on income, but return has been filed after the due date, such tax on self-assessment is not considered as item of deduction for the levy of interest under Section 234A. Advance tax and TDS are not subject to this levy of interest under Section 234A. As tax on self-assessment is also similar to the advance-tax and TDS as far as revenue is concerned, interest under Section 234A should not be levied on tax on self-assessment paid within the due date.

Suggestions

Section 234A of the Act should be amended to give credit for the tax paid under section 140A within due date, while calculating the interest payable by the assessee.

30. INTEREST PAYABLE ON SHORTFALL IN LAST INSTALLMENT OF ADVANCE TAX. - SECTION 234C

By an amendment to sub-section (1) of Section 234C made by the Finance Act, 1994 it is now provided that interest shall be payable if the aggregate advance-tax paid by 15th March, of the financial year falls short of the full amount of the assessed tax. In consequence of the new amendment, assuming that an assessee is late in payment by one day, he would have to pay additional 1% of the shortfall as interest under Section 234C. In other words, he would be paying 1% for a day's delay, which works out to an interest rate of 456.25% per annum. This could not have been the intention of the legislature.

In contrast to the above, it may be pointed out that for purposes of Section 234B, the assessee is allowed a tolerance margin of 10% and time upto the end of the year since the interest under this section is charged only from the following 1st April.

Suggestions

In the circumstances, it is suggested that this provision be amended by providing that interest shall be payable for shortfall in the 15th March installment only if the last installment is not paid within the end of the Financial Year and only if the advance tax paid before the financial year falls short of 90% of the assessed tax.

31. ALLOWABILITY OF INTEREST PAID UNDER INCOME TAX ACT, 1961

Today, interest paid by the Government to an assessee is chargeable to tax. However, interest paid by the assessee to the Government under various sections is not allowed as deduction while computing the total income. Interest paid by the assessee is for the use of money by him and is compensatory in nature.

Hence, interest paid by the assessees to the Government under various sections of the Income Tax Act should be allowed as deduction in computing total income. If the assessee does not have business income, interest should be allowed under the head 'Income from other Sources'.

Alternatively, the interest received by the assessee should be exempt from tax.

32. INCOME TAX REFUND (SECTION 244 & 245)

a) Accountability:
Suggestions

While introducing the accountability of IT officers, it is necessary to introduce a code of ethics for the IT administration apart from the code of conduct laid down in civil service conduct rules. This will improve the quality of administration.

b) Income Tax Refund (Section 244 & 245)

i) The chamber welcomes direct credit of refunds in the bank of the assessees. It is suggested that IT refunds should automatically accompany the assessment order. In specific cases, where refunds are not accompanied with assessment order, there must be a speaking order stating the reason for withholding the refund and such order should be appeallable. On appeal, the refund is allowed then. ITO passing such order should be made accountable to the government for loss of interest due to delayed payment of refund or for negligence with an intention to harass the assessee. Unless concerned ITOs are made accountable for their lapses, it may breed corrupt practices and affect the confidence of the public, which is contrary to the government desire to promote voluntary compliance.

It is a common experience of an assessee that in many cases refunds due for 8 to 10 years are not refunded by the IT department on some pretext or other and this is not only causing harassment to the assessee but also encouraging corruption and loss of interest to the exchequer because of neglect and lethargy of the officers concerned.

ii) Though Section 245 empowers the Income Tax authorities to set off any Refund due to an assessee against any sum payable by the concerned assessee under the Income Tax Act, an assessee does have any authority to adjust any refund due to him against any tax payable by him.

Suggestions

Hence, it is suggested that in Section 245, a new sub Section provision may be made by which an assessee, who is entitled to get a refund from the Income Tax Department either on the basis of any order/intimation passed by any Income Tax authority or on the basis of any Appeal Effect to be given by an Income Tax Authority or on the basis of Return filed by him in respect of which the prescribed time limit under Section 143(2) has already been over, to reduce any of his income tax liabilities whether by way of regular demand or advance tax or self assessment tax, by the due Refund. For this purpose a suitable Form may be prescribed in which the necessary details should be filed by the assessee concerned at the time of adjustment or refund by him. To prevent any misuse of the proposed provisions, levying of interest and/or penalty at a rate higher than the others already existing in the Act may be prescribed in the proposed sub-Section of Section 245 itself. It is felt that if such a new provision is brought, then not only the assessee would save time from running to the Income Tax Department repeatedly for getting the refund but also the job relating to the collection and recoveries required to be performed by the Income Tax Authorities would be reduced substantially.

33. SECTION 244A

Under Section 244A (1)(a), an assessee is entitled to receive interest on refund out of any tax collected at source, tax deducted at source or advance tax paid from the 1st day of April of the assessment year to the date on which the refund is granted. Clause (b) of Section 244A(1) provides that in case the refund is out of any other amount, interest shall be calculated for the period from the date of payment of the tax or penalty to the date on which the refund is granted. Accordingly, the assessee is entitled to receive interest on amounts paid either by way of self-assessment tax or in pursuance of a notice of demand. The explanation below of the above clause reads as under:

'Explanation - For the purpose of this clause, "date of payment of tax penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid excess of such demand.' The aforesaid Explanation instead of clarifying the meaning of 'date of payment' speaks of the amount being paid in excess of the amount demanded. Further, this Explanation creates an impression that only a tax or penalty paid in pursuance of a notice of demand, if paid in excess of the demand, is entitled to interest under Section 244A and no other payment is eligible to the said interest. However, as the intention of the legislature is to grant interest to assessee for money remaining with the Government as is clarified in the aforesaid circular, there is no reason why such a restricted meaning should be taken especially since clause (b) grants interest on refunds of any other amount due to assessee. The aforesaid Explanation is

being used by many Assessing Officers to deny interest on refunds out of self-assessment tax paid by the assessees although it is not the intention of the legislature to do so.

Suggestions

- **Explanation below clause (b) of Section 244A(1) be deleted since no clarification is required for the date of payment of the tax or penalty. Provision to clause (a) of sub section (1) of Section 244A provides that no interest to be payable if the amount of refund is less than 10% of the tax as determined. However, in certain circumstances the amount of tax determined may be very high and even 10% of such amount would result in a high figure. The refund is normally granted after an assessment is completed or intimation is issued, which is normally issued just before the expiry of one year from the end of the financial year. The assessee in such cases would lose interest of almost a year, which otherwise he could have earned by making investment.**

- **Aforesaid proviso to section 244A be deleted.**

34. INTEREST ON DEMANDS & REFUNDS

On refunds the assessee is entitled to interest at the rate of 0.5% per month whereas the Government charges interest on @ 1% per month.

Suggestions

Principles of equality and natural justice require that the rate of interest on demands and refunds should be uniform.

35. PENALTY UNDER SECTION 272A(2) AS APPLICABLE TO CHARITABLE ORGANIZATION.

In case of a Charitable or religious trust, a return of income is required to be furnished under section 139(4A) if the total income of the trust exceeds the maximum amount which is not chargeable to income-tax. For this purpose, the total income is required to be computed without giving effect to the provisions of Sections 11 & 12. Therefore, practically, in most of the cases, the gross donation and other receipts will become the base and if the same exceeds the maximum amount which is not chargeable to income-tax, such trust becomes liable to furnish return of income, though, actually such trust may not have taxable income. If the return of income, in such cases, is not furnished within the prescribed time limit, then, the trust becomes liable to pay penalty under Section 272A(2). The amount of such penalty is not linked with the taxable income of the trust. Accordingly, even if the trust does not have taxable income, it will be liable to pay penalty under this section. Defaults covered by the provisions of Section 272A(2) are of technical nature. These happen genuinely due to lack of information on the part of charitable organizations, as they do not normally have access to professional assistance. Penalties prescribed under Section 272A(2) are extremely harsh. Such penalties for technical defaults cause tremendous hardships to charitable organization.

Suggestions

It is, therefore, suggested that the provisions of Section 272A(2) should not apply charitable organizations. In any event, penalty should be nominal for technical defaults, having no significant revenue impact.

36. <u>DISALLOWANCE OF EXPENDITURE IF TAX NOT DEDUCTED/PAID AT SOURCE</u>

The Finance (No.2) Act, 2004 has extended the scope of provisions of section 40(ia) whereby any i) Interest ii) Commission & Brokerage iii) Fee for Professional Services or Fee for Technical Services iv) Amount paid to contractor or sub-contractor which is payable to a resident on which tax has not been deducted or after deduction it has not been paid within the time prescribed under section 200(1) in accordance with the provisions of Schedule XVIIB, the same shall not be allowed as deduction while computing income under the head 'Profit and Gains of Business or Profession'. This provision is already there in respect of payment to non-residents. However, this provision has been extended in respect of payment to residents also. It has been further provided that in any subsequent year if tax is deducted and paid on such sum, the same shall be allowed as deduction in computing income of the year in which such tax has been paid. The objective stated for introducing this provision is to enforce compliance of provision of TDS. However, this provision is too harsh and going to cause lot of problems to the tax deductors. Firstly, there are enough provisions under the Act to enforce compliance of the provision of TDS. (i) Under Section 201(1) on failure to deduct or failure to pay after deduction the person is treated as an assessee in default and the amount is recoverable from him. (ii) Under Section 201(1A), such person is liable to pay interest for the period of the default. (iii) Under Section 271C such person is liable for penalty which can be equal to the amount of tax involved. (iv) Section 28 to Section 44D are meant to compute the profit of the business or profession and should not be used to enforce compliance in respect of tax liability of other persons. The applicability of Section 40(a) in respect of payment to a non-resident may be justified because such non-resident are not easily traceable and as such the tax liability of such persons get compensated by denial of the benefit to the deductor. In case of residents, the traceability is not a problem. Moreover, there can be a practical problem where the deductor has failed to deduct tax and in such a situation and the deductee has paid tax on such income either by way of advance tax or by way of self assessment tax and in such a situation the deductor cannot deduct tax again from the deductee and the benefit of deduction of such expenditure shall be lost forever as the condition of the proviso of claiming the deduction in the subsequent year when tax is deducted and paid shall never be fulfilled.

It has been further stated that if the tax has been deducted and not paid in time or within financial year or for the year end, if the payment has not been made on for before 31st May, the last date for payment of Taxes for the year ended 31st March or if paid in the month of June in next year, such deductions or expenses claimed will not be allowed.

Last amendment on this account include relaxation for deposit of TDS amount of March only within return filing due date.

This provision is very harsh to the assessee. He is deemed to be an agent for and on behalf of the government for collection of Tax and if there is delay in payment, he will be deprived of disallowance.

Suggestion

The amendment made to section 40 be dropped as enough deterrent provisions already exist to ensure compliance with TDS provisions. Hence, there is no justification for denial of deduction of genuine business expenditure for failure to deduct or deposit TDS. Or alternatively amount of TDS deposited within return filing due date for full previous year should not be subject to disallowance.

37. <u>INFRASTRUCTURE FINANCING ISSUES</u>

<u>A. Exemption to Asset Financing NBFCs from TDS requirements u/s 194A(3)(iii) of the I.T.Act</u>

- As per Section 194A of the Income Tax Act 1961, tax has to be deducted out of the interest payment made by any borrower to an NBFC at 10%.

- Banking companies, co-operative societies engaged in banking business, public financial institutions, LIC, UTI, insurance companies and some other notified institutions are exempted from the purview of this section implying that if the payment of interest is made to them, the borrower is not required to deduct TDS out of the interest payment.

- This stipulation puts NBFCs in a disadvantageous position and creates severe cash flow constraints since NBFCs operate on a very thin spread of interest income.

<u>Analysis of a typical loan transaction of a NBFC:</u>

Let us assume a NBFC lends at 10%, borrows at 9%, thereby leaving a gross margin of 1%. Interest income of the NBFI subject to TDS of 10%, implying 1% out of 10% will go for TDS deduction, and net inflow post TDS would be 9% whereas outflow in respect of borrowing cost would be 9%, thereby implying zero cash flow. There is no justification in imposing TDS stipulations on the interest payments made to NBFCs.

Interest rate charged by NBFC	10%
Borrowing rate of NBFC	9%
Interest income of NBFC subject to TDS	
TDS rate	10%
TDS deduction = 10% of 10%	1%
Net earning by NBFC = **Interest rate earned – Borrowing rate – TDS =** **10% - 9% - 1%**	**0%**

Suggestion:

Exemption should be granted from TDS on interest payment to Asset Financing NBFCs u/s 194A(3)(iii) of the Income Tax Act. In order to prevent any misuse of the exemption, CBDT can stipulate that only systemically important infrastructure financing NBFCs (registered with RBI and following all the prudential norms prescribed by RBI) will be entitled to the exemption.

B. Mandatory Provisions by Leasing Companies to be Allowed as Deductible Expense u/s 36 (1) (viia)

- Under the existing provisions u/s 36(1)(viia) in the I.T.Act, a provision for bad and doubtful debts made by banks and FIs is allowed as a deduction to the extent of 7.5% from the gross total income. Alternatively, such banks and FIs have been given an option to claim a deduction in respect of any provision made for assets classified by the RBI as doubtful assets or loss assets to the extent of 10% of such assets.
- However, there are no such provisions for NBFCs in spite of the fact that NBFCs are now subject to RBI directives as regards income recognition and provisioning norms. Accordingly, NBFCs compulsorily have to make provisions for NPAs. But they are required to write off bad debts and satisfy other conditions to claim deduction just like any other business. Provisions made by NBFCs in line with such prudential norms fixed by RBI are disallowed by tax authorities when assessing their income tax liabilities.

Suggestion :

Along with banks and FIs, NBFCs should also be appropriately covered u/s 36(1)(viia) of the I.T.Act.

C. Sec. 43D of the I.T.Act :

Section 43D of the I.T.Act, 1961 recognises the principle of taxing income on sticky advances in the year in which they are received. This benefit is already available to Banks, FIs, State Financial Corporations and Housing Finance Companies, but not NBFCs.

- A significant part of the priority sector lending done by banks is to the road transport sector and banks' lending to NBFCs for onward lending to the road transport sector, is also considered as part of their priority sector lending by RBI.
- Like banks, NBFCs play a crucial and prominent role especially in the rural and social sectors of the economy by providing finances for the acquisition of trucks, buses and tractors, which operate mainly in rural and semi-urban India.
- NBFCs' exposure to the rural / social sectors is more direct and pronounced, since financing for acquisition of vehicles provides a spin-off benefit by creating jobs and opportunities in the rural parts of India.

Suggestion :

Subjected, as NBFCs are, to all the prudential norms on provisioning and income recognition, it is only fair and equitable that the benefits already available to banks and FIs under the captioned sections of the I.T.Act be extended to NBFCs too.

D. Depreciation in respect of Construction Equipment registered under Motor Vehicles Act

- The I.T.Act allows depreciation at the rate of 100% in case of certain equipment meant for pollution control, solid waste control, mineral oil concerns, mines and quarries, energy saving devices and renewable energy devices. The Act also allows high rate of depreciation to motorcars, buses, motor lorries and taxies used in a business of running them on hire.
- Construction equipment, which are registered under the Motor Vehicles Act and which contribute immensely to infrastructure development, are not given this benefit of higher depreciation rate.

Suggestion :

Construction equipment which are registered under the Motor Vehicles Act and used in the business of running them on hire should be extended this benefit of higher depreciation rate.

E. Withdrawal of tax deduction on interest paid on Foreign Borrowings

- Union Budget 2001-02 had withdrawn the External Commercial Borrowings (ECB) tax exemption in respect of interest paid effective from 1st of June, 2001. This withdrawal of exemption raised the cost of borrowings to the extent of tax deducted as the foreign lenders are insisting upon gross interest payment, i.e. without deduction of tax.
- All ECB documentation carries a standard clause that interest shall be paid on gross basis. By this, the borrower, say an Indian Company, would pay the withholding tax to the government and also pay the full amount to the lender.

- ECB route has been a cheap source of finance for the Indian companies, but the withdrawal of tax exemption has jeopardized the operation of all companies in the country who follow the ECB route for raising their funds.

Suggestion :

Government should revert to the earlier provisions and grant exemption from deduction of tax on interest paid on ECB loans.

F. Exemption to NBFCs registered with RBI from the purview of Sec. 269T of the I.T.Act :

- Sec. 269T of the I.T.Act was amended by the Finance Act 2002 to make it obligatory on the part of all persons including individuals to repay any loan or deposit only by an Account Payee Cheque or Account Payee Bank draft drawn in the name of the person

- who has made the loan or deposit if the aggregate amount of loan or deposit together with interest thereon is Rs. 20,000 or more.
- However, transactions with banking company are exempt from the operation of this provision.
- Like banks, NBFCs are also extending loans to various categories of persons including individuals in large number. However, NBFC transactiosn are not exempted from the operation of this provision.

Suggestion :

Since loan portfolio of NBFCs is similar to that of banks and considering the same regulatory environment under which NBFCs are operating, NBFCs registered with RBI be exempt from the applicability of Sec. 269T of the I.T.Act.

G. Section 10 (23G) of I.T.Act

The 2006 Union Budget announcement pertaining to removal of incentives on infrastructure financing under Section 10 (23G) of I.T.Act from fiscal year 2007-08 onwards is adversely impacting the process of infrastructure creation. Under section 10 clause 23G of IT Act for companies engaged in infrastructure projects by way of equity or debt or both, their net income from such investments (in the form of dividend or interest or long term capital gain) is exempt from tax. The withdrawal of this exemption was supposedly on the ground of a benign interest rate regime in 2006. However, interest rate has inched northward since then. The credit crunch scenario that is presently unfolding itself in the backdrop of the sub-prime crisis is likely to make capital even more scarce. The tax benefit also enabled project developers to bring down their borrowing cost. Removal of such a cushion has put a question mark on the viability of many projects and is acting as an impediment for future investments.

The worst affected are the institutions like SREI, IDFC, IL&FS etc. who have already made substantial investment in infrastructure projects. Many banks who have also invested in investment projects have been affected.

The next 5 years call for investments worth USD 492 billion for infrastructure alone. In today's scenario, where there is a paucity of long-term funds and where Government is expected to incentivise private investments, removal of the exemption sends out a very negative signal.

Suggestion :

In this backdrop, this matter needs to be reviewed and exemptions be re-instated with immediate effect.

38. SEZS AND 100% EOUS – EXTENSION OF IT EXEMPTION:

Suggestion

Extension of time limit u/s 10A and 10B of the Act beyond 31st March 2010 is suggested for EOUs worth Rs.37,657 crores last year. In the era of globalisation and modernisation, it is appropriate time to announce such extension in the budget proposals.

39. TAX PROPOSALS

(i) DEFINITION OF "CHARITABLE PURPOSE"

It has been proposed to amend the definition of the term Charitable Purpose u/s 2(15) of Income Tax Act so as to provide that "the definition of any other object of general public utility" shall not be a charitable purpose if the definition is carrying on (A) any activities in the nature of trade, commerce or business and or (B) any activities of rendering of any service in relation to trade, commerce and business.

This proposal will affect adversely genuine charitable activities of different trusts, Chambers of Commerce etc. Refer following examples:

(A) Medicine shops in Charitable hospitals.
(B) Seminar, conference organised by chambers of commerce or federation for a fee from delegates.
(C) Renting of meeting halls by chambers of commerce to other organisations.
(D) Trust providing marketing facility to villagers for their handicrafts products.

In respect of the above a long list will go on. It is not the intention of the Parliament to tax the activities like above, but the proposal in its form in the Finance Bill shall definitely affect all above and similar other activities. Therefore, the proposal should be reviewed, reconsidered and redrafted to limit the intent of the amendment.

The Board has issued the circular No. 11/2008 dated 19.12.08. This provision is affecting adversely to large number of Chambers of Commerce in India. A Chamber of Commerce is a representative body and is very unlike an industrial/business unit. It interacts with various government bodies and agencies as also non-government for promotion of the sector it caters to. It also promotes of its opinion in the larger interest of the economic development of the concerned sector / region for country. It interacts with members and non-members on issues of economic interest to the trades and businesses while organizing workshops, seminars, and conferences. It charges higher fees from non-members in lieu of annual subscription from members. Since it collects fees in such activities are not outside the exemption categories having first three limbs of section 2(15) of Income Tax Act, 1961. It would be hard hit by the recent amendment where definition of charitable trust had undergone drastically.

Suggestion:

Specific exemption provision should be added in the definition of charitable trust whereby Chambers of Commerce and like bodies would be exempted from the purview of amendments made in Sec. 2(15) of the Act and the said circular No. 11/2008 dated 19.12.08 should be clarified, as not applicable to the Chambers of Commerce and like bodies. Since, otherwise it is considered to be a counter productive and it will harm the national interest.

40. STAY OF DEMAND BY ITAT

It has been proposed that even if the appellant assessee had cooperated in appeal proceedings before ITAT, the power to grant stay by the ITAT for a period exceeding 365 days in aggregate had been withdrawn. It is most unfair for the appellant assessee. It is, therefore, suggested that where the appellant assessee has not cooperated with the ITAT for disposal of appeal, the ITAT should not extend the period of stay grant against the disputed demand exceeding 365 days. But, where the appellant assessee has cooperated in the appeal proceedings before the ITAT, no such restriction of 365 days should be imposed or extending the stay of demand.

41. SHORT TERM CAPITAL GAIN TAX – INCREASE IN THE TAX RATE – MARGINAL RELIEF REQUIRED.

In order to promote the capital market and the investment community at large, the proposal of increase the rate of tax from 10% to 15% should be withdrawn.

If at all, such suggestion is not accepted, at least a provision of marginal relief should be added where the taxable income of an assessee including short term capital gain exceeds Rs.1.5 lacks / Rs.1.80 lacs for women assessee / Rs. 2.25 lacs for senior citizens. In other words, where the tax slab rate for other income is 10%, the assessee should not be asked to pay tax @15% on short term capital gain.

42. TAX DEDUCTED AT SOURCE (TDS)

Various monetary limits have been provided in different provisions of Tax Deduction at Source (TDS) where no TDS is required to be made. We propose that the limits should be enhanced. The following table explains the same:

Section	Present Limit	Proposed Limit
194BB/194EE/194H	Rs. 2500	Rs. 20000
194A/194B/194D	Rs. 5000	Rs. 15000
194C (Single Contract)	Rs.20000	Rs. 50000
194C (Yearly aggregate)	Rs.50000	Rs.150000
194I	Rs.120000	Rs. 3,00,000
194 J	Rs.20000	Rs. 50000

Alternatively it should be linked with an index notification similar to next notification issued year to year in respect of capital gain tax.

43. FDI INVESTMENT

(i) The funds would have to be brought in within six months of Commencement of the construction activities of the Project.

(ii) Foreign investment should be allowed on project specific basis by describing a methodology for utilization of funds raised on FDI Compliant project only. This can be done by putting the conditions like

a) Amount raised should be kept in a separate bank account.

b) Monitoring Agency should be appointed for monitoring the utilization of the fund for the project only.

c) Auditor's Certificate should be obtained on six monthly / yearly basis that fund raised by the company is utilized only for the project for which it is raised.

(iii) A notification / circular should be issued providing clarification that investment by FIIs under PIS by way of acquisition of shares from the stock exchange or through purchase of shares in Public offer / private placement is not FDI and hence the conditions specified for FDI compliant project should not be applicable

Reasons:

i) The term commencement of business of the company is interpreted as date on which certificate of commencement of business of the company is issued by the Registrar of Companies. This indirectly means that FOI can come only in Green field projects or projects undertaken by newly incorporated companies. However, in actual scenario there are so many existing companies with good track record who are undertaking FDI compliant project but those companies are unable to raise funds through FDI as the certificate for commencement of business would have been obtained by the company prior to more than six months from the commencement of . FDI compliant project. (In most of the cases the certificate of commencement of business of the company is obtained even many years ago). In view of this a condition should be modified in such a manner that FDI funds can be raised within six months from the commencement of construction of activities of the FDI Compliant project.

ii) The Present regulation do not permit raising of fund through FDI by existing companies who want to venture into FDI compliant project.

iii) By modifying the regulation in the suggested manner the existing companies who are having actual track record of construction activity can also raise resources through FDI. The Government will get much more safety in such cases as existing companies are already having very good track record and experience of construction related activities.

iv) This is required as FIIs are investing in the companies for earning profits by way of dividends or capital gain. Whereas a foreign investor, other than FII are real investors having background of real estate and construction sector. Hence, the condition of FDI compliant projects should be applicable only to investors other than FIIs.

44. <u>TAXATION ON COST INPUT</u>

(i) The building industry is facing very high rate of levy of stamp duty, assessment tax, octroi charges,

(ii) Presently there is multilayer taxation on the cost input of building materials from local body, State Government & Central Government. In effect the costing of the final product becomes too high because of high costing of input materials. The levy of taxation on cost input should be made on single point basis on not multi level.

(iii) It is respectfully submitted that the various soaps given in Income Tax act for facilitating affordable housing and real estate. The government should look into reducing various level of taxations at centre, state and local governments. Moreover the multiplicity of taxes at various transaction levels such as procurement of land, material, labour, services, octroi, various development charges etc., should be reduced and one point taxation should be levied, so that the heavy burden of this multiplicity of taxes is reduced and automatically the cost of construction of flats, will come down drastically and in turn the buyers will get affordable housing automatically and vast majority of population will be able to afford residential housing on their own.

It may be noted that the sum of all the taxes/duties/levies, etc. as a percentage of the cost of a flat is inversely proportionate to the value of real estate which means high value real estate in metro cities pays a lesser percentage towards these levies than the low value real estate in the Tier II & Tier III cities where the impact is far more. Since the prices are exorbitantly high, the developer in metro cities are able recover the high amount of taxation at various levels whereas in Tier II and Tier III cities the sale price is not so high to recover the burden of high amount of tax. Hence the impact of high tax is far more in

Tier II and Tier III cities as compare to metro cities.

If the levy of taxation at various levels are reviewed and can be consolidated in fewer categories of taxation, it will automatically serve the purpose of affordable housing.

45. MAJOR CONCESSIONS FOR MASS AFFORDABLE HOUSING

(i) Exemption from excise, customs, vat and service tax on building material and services.

(ii) Exemption on income tax for all such projects for ten years.

(iii) Treating such projects as priority under infrastructure projects and finance to be freely available at lowest possible interest rate

46. PROMOTION OF RENTAL HOUSING TO CREATE SUPPLY FOR DIGNIFIED ACCOMMODATION TO MASSES WE NEED TO PROMOTE RENTAL HOUSING

(i) All income on rental from houses below 150 sq mtr houses to be exempted from income tax and service tax.

(ii) No ceiling on holding houses for the purposes of long term capital gains tax

(iii) No tax on long term capital gains.

47. PAYMENT OF DOUBLE STAMP DUTY ON SALE OF APARTMENTS/OFFICES

We have for the last several years, been highlighting the issues relating to payment of Stamp duty on purchase of land and on sale of apartments. Presently, Stamp Duty is required to be paid on purchase of land; again after the apartments/offices have been constructed on the same piece of land, they are sold and once again Stamp Duty is required to be paid on the market value of such apartments comprising of the value of land itself (on which Stamp Duty is already paid) and also on the value of construction of apartments/offices. This, therefore, tantamount to payment of Double Stamp Duty. Moreover at every transaction of sale by one flat holder to another stamp duty is leviable which further aggravates the situations and the state government is collecting stamp duty exorbitantly on one residential unit over a period of years from various persons.

The payment of Stamp Duty on the purchase of the land is required to be set off against the payment of Stamp Duty paid at the time of conveyance of Apartments/Offices.

We suggest that the Government should introduce "VALUE ADDED STAMP DUTY (VAS)" for the Housing Industry. In this system, any Stamp Duty paid towards the purchase of land will be adjusted from the Stamp Duty paid at the time of conveyance of the apartments/offices.

D. WEALTH-TAX ACT, 1957

1. Abolition of Wealth Tax

Considering the amount of revenue generated by levy of Wealth-tax and the efforts involved in its collection it is suggested that Wealth-tax levied under the Wealth-tax Act may please be abolished. In any event in view of the inflation and the fall in the real value of rupee, the exemption limit for the purposes of Wealth-tax be increased from Rs.15 lakhs to Rs.45 lakhs. It is time to phase out Wealth Tax that has not generated any sizeable revenue. Sometime back the Gift Tax was abolished. In addition, the Planning Commission in its draft plan approved paper that has advocated that tax should not be imposed unless revenue there from justify its administrative and collective costs.

Suggestion

On this count itself there is no justification for existence of Wealth Tax levy. With no social security and inflation eroding the value of money year by hear people's savings are the only safeguard for their future security, which is already diminishing in value with inflation, should not be further taxed with Wealth-tax. It would also simplify the tax laws eliminating time consuming litigation on valuation of properties, which does not end till it reaches the Apex Court. If cross-check on income and wealth is required the same can be provided in the Income Tax Return Form itself with an additional column for disclosing opening and closing net wealth of the assessees.

2. DEFINITIQN OF ASSETS - S. 2.E(A) :

(i) The definition of "assets" for the purpose of Wealth Tax exempts any residential property that has been let out for a minimum period of 300 days in the previous year. Properties acquired after a period of 65 days from the commencement of the year

(ii) therefore do not qualify for exemption, though they may have been let out since the date of acquisition. It is therefore suggested that Clause 4 of Sec. 2(ea)(i) amended to read

"any residential property that has been let out for a minimum period of 300 days or, in the case of a property acquired during the previous year, a minimum period of 75% of the days for which the property was held by the assessee, during the previous year."

IV. **INDIRECT TAX**

A. GOODS AND SERVICES TAX

We are enclosing our memorandum on First Discussion Paper on Goods and Services Tax published by the Chairman, Empowered Committee of State Finance Ministers dated 10th November 2009 for active consideration thereof by introducing a new law on Goods and Services Tax.

B. SERVICE TAX.

(i) RATE OF SERVICE TAX: The levy of 10% service tax rate is too high, more particularly for trading community of service users who are not eligible to claim any input credit under CENVAT Credit Rules. It should be reduced to 5%, the rate at which the service tax was originally introduced.

(ii)(a) In view of firm rupee position in foreign exchange market & continued suffering of heavy financial loss by exporters, the Government has come out with notification for refund of Service Tax on selected categories of service received by exporters. It is felt by our Chamber that the step taken by Government is half hearted. Service Tax paid by the exporters on entire service used directly for the purpose of exports should be refunded.

(b) Service tax is payable under the category of '*Port Services*' even on export consignment. But under the category of 'Cargo Handling Services', service tax is exempt on handling on export cargo or passenger package under Sec. 65(23) of the Act. This anomaly appears under two different categories of services in respect of export cargos.

(iii) CLUB OR ASSOCIATION SERVICES

We have noted that services provided by a Club or Association have been brought under the ambit of Service Tax w.e.f. 16.6.2005. The expression ***'Club or Association'*** has been defined to mean ***'any person or body or persons providing services, facilities or advantages for a subscription or any other amount to its members'***.

The definition, however, has ***exempted the following categories of Associations from the levy of Service Tax***. These are :

a. any Association established or set up under any law for the time being in force;

b. any Association engaged in the activity of Trade Unions, promotion of agriculture, horticulture or animal husbandry;

c. any Association engaged in activities which are in the nature of public service, charity, religions or political activities; and

d. any Association of Press or Media persons,

We feel that Chambers of Commerce & Industries do not really fall within the definition of ***'Club or Association'*** as aforesaid, **as their activities are** different, their role and functions in the economy are different, and unlike a Club or Association they do not render any specific services or facilities to its members against subscription, except general services for the promotion of trade and industry, economic growth and exports and de-bottlenecking of procedures, and ensuring a fair deal for the business and all stakeholders of the community in general.

Of course, the ***Chambers authorised to issue Certificates of Origin and Visa recommendations***, do so against Fees at the instance of the Union Government for the purpose of promoting India's foreign trade and investment, sourcing of industrial raw materials and inputs, technology and JVs etc. ***These are by no means commercial activities of any Chamber of Commerce & Industry***. As such, ***Membership subscription and Fees from COOs & Visa Recommendations are revenues essential for carrying on the basic functions of a Chamber of Commerce and not revenues from commercial activities. Hence Service Tax should not be levied on them.***

However, some resourceful Chambers may have other sources of income from renting of building and Conference Halls, organizing Conference/Summits and charging Delegate Fees, organizing Trade Fairs in India and Overseas, taking Business Delegations abroad to participate in International Fairs etc. These activities also are mostly in the nature of trade and industry promotion, and creation of goodwill for India in the comity of nations which add up to the efforts of the government also in building up good friendly relations with all countries.

As such, all these activities also are in the nature of ***'public service'*** or ***'national service'*** which the government also is encouraging, and the Chambers are charging fees to finance them and cover costs without depending on the government. Now, ***if the Finance Ministry wants to curb such activities by levying Service Tax on them, it can do so. But***

we are sure that the cost to the nation would be disproportionate to the revenue collection therefrom, and economic growth environment will suffer a serious set-back.

It has been appreciated, time and again, by the government that the Chambers of Commerce play a vital role in the growth of the economy. Their activities go far beyond their members and they act as an indispensable linkage between the business community and the government in furthering economic growth and making paradigm shift in economic policy and procedures to keep up with the global changes. ***Over the last few years, many Chambers have extended their activities to achieve the following social objectives also***, albeit on a limited scale –

- Development of select villages in the States, to seek improvement in literacy, employment & livelihood and productive activities;

- Management of Environment through awareness compaign in educational institutions, and collaboration with State Governments and PCBs to abate pollution in industry, transport, and Municipal Bodies;

- Opening of Tax Clinics/Tax Assistance Desks, in association with the tax-authorities to facilitate implementation of new Acts/Forms by offering guidance and advice to the assessees, as at the time of introducing VAT;

- Setting up MSME wings in the Chambers to act as a catalyst for the promotion of medium and small enterprises, in particular, so that they can become efficient and globally competitive;

- Adoption of City Beautification and Maintenance Programmes.

The argument put forward by the CBEC in its circular dated 04 June 2008 to the Commissioners for levying Service Tax on the Chambers of Commerce ***seems to be neither correct nor comprehensive***. The Circular states ***'they collect membership fees and other charges from their members and they work for the interest of trade and industries. Therefore, they do not have objectives which could be categorised as public service'.*** This is too narrow, outdated and simplistic a view of the role and purpose of having a Chamber of Commerce in the country.

A Chamber of Commerce naturally ***'works for the interest of trade and industries', CBEC writes in the said circular'***. How then the benefits are limited to the members only, and not enjoyed by the whole country as well as the government, both Central and State, in terms of production, revenues, income and employment ? We fail to appreciate the logic behind such a conclusion. Sir, ***you have rightly clarified with reference to the amendment of Sec.2(15) of the I.T. Act while rounding up the debate on the Finance***

Act, 2008 that 'Chambers' activities would continue to be regarded as advancement of any other object of general public utility'.

Even from a legal view-point, ***any object of 'general public utility' is treated as a 'charitable purpose' and exempted from tax***. In the case of CIT –vs-- Bar council of Maharashtra reported in AIR 1981 SC 1462, it was held that the purpose of State Bar Council was to ensure quality services of competent lawyers to spread legal literacy, promote legal reforms and provide legal assistance to the poor. Such purpose is the advancement of the object of the general public utility, and it will be a charitable purpose.

Sir, we believe that you will kindly appreciate all these various considerations as explained above and agree that Chambers of Commerce & Industry cannot be put under the same category of institutions as ***'Clubs and Associations'***. ***They belong to a clearly different category, with distinct features, objects and activities which are in the nature***

of 'general public utility' and not limited to the promotion of interests of their members only. Appropriately, Chambers of Commerce & Industry could be placed under Serial 'C' of the exempted category.

The Chambers, therefore, strongly suggest to abolish such levy against the Chambers of Commerce & Industry for realising service tax with retrospective effect from the day of inception.

(iv) Levy of State Sales Tax and Central Service Tax on the same category of receipts by an enterprise, prevalent at present in India, can be palpably punitive and distortionery. The tax turns out to be particularly burdensome and acute when the same transaction is treated as sales of goods by the other. Taxation of telecommunication (on pre-paid chargeable cards sold by telecom operators is subject to service tax and now again subject to sales tax, because of a Supreme Court's Verdict). On the other hand, the Ministry of Telecommunication had urged different States not to levy sales tax for telecommunication boom in the country.

Another example is taxation of contractors and sub-contractors, lease (hire purchase agreement), financial leasing (including equipment leasing and hire purchase). The international transactions consider this either as goods (in Canada) or as service (in Europe), and not both. In all its fairness the Central should treat them as sales of goods and remove it from the levy of Services.

v. **1. Service Tax on Hire Purchase/Lease Transactions**

- The Union Budget for the year 2001-2002 imposed Service Tax on Hire Purchase and Leasing transactions.
- Both these transactions have been defined as "deemed sale" transactions.
- Constitutionally and logically any transaction can either be a "Sale" or a "Service", but cannot be both.

- A levy of 10% service tax is imposed on the interest component of Hire Purchase / Lease transactions. In addition, sales tax / VAT was also incident on the interest component. Such multiple taxation was badly hurting the leasing industry, so much so that lease and hire purchase as financial products got almost killed in the country.
- Following representations from the industry to the government on this matter, this levy of service tax was abated to the extent of 90% of the interest component.
- While small and medium enterprises depend on lease and hire purchase for their finance needs, taxing these products to death in turn spells doom for the SME players.

Suggestion :

Continuing with a partial levy of service tax actually makes no sense, especially when the industry is paying sales tax / VAT. Thus, even a partial levy i.e. incidence of a service tax on 10% of the interest component should be withdrawn. Lease and Hire Purchase transactions should be considered as 'Deemed Sale' and subject only to VAT.

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2. Import Duty Exemption on Road Construction Equipment

Import of 21 types of Road Construction Equipment as listed in List 18 (Sec. 230 of the table) under custom notification No.21/2002 dated 1st March 2002, is allowed on payment of NIL import duty/ additional duty/ countervailing duty, provided the goods are imported by:

a) the Ministry of Surface Transport; or
b) (i) a person who has been awarded a contract ; OR
   (ii) a person who has been named as a sub-contractor in the contract,
- for the purpose of construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government or by a road construction corporation under the control of the Government of a State or Union Territory.

- It is pertinent to note that the intentions of providing benefits of **NIL** Custom Duty is **primarily** for usage of these equipment to help accelerate the growth of infrastructure sector (Roads) and also to bring down the effective cost to the contractor, as well as reducing the overall project cost for the sponsor (government).
- These equipment can be used **only** in the road sector. There is hardly any other alternative use of these.
- The Infrastructure Equipment Banks (IEBs) import these equipment to provide the same to the contractors for various road projects. Thus, these equipment imported by such agencies are used for the same purpose by the same set of people. Import by IEBs would in fact lead to better utilization of the equipment over the life of the equipment ensuring improved capital efficiency. Moreover, medium and small contractors, would also be benefitted from higher level of availability, mechanization and efficiency.

Suggestion :

If this facility to import road construction equipment as mentioned in the notification is also extended to the IEBs, there will not be any loss of revenue to the government. Rather the long-term benefits to the economy will only increase. Thus, government should not discriminate among parties regarding exemption of import duty for import of road construction equipment.

B. CENTRAL SALES TAX

i) Issuing Forms in respect of periods intervening two quarters

Another point of contention and concern for the dealers relates to transactions during the period of changeover from one quarter to another. Example: ‘A’ a seller from Andhra Pradesh sends goods from Hyderabad to ‘B’ of West Bengal on 29th March with an invoice dated 29th March. The Goods are received by B on 5th April. B records the purchases on 5th April. Based on his records B will issue C form after end of the quarter i.e. in July for quarter April to June. A will require C form for his assessment for the period ending on 31st March. This may and is causing lot of avoidable difficulties to genuine / honest dealers for no fault on their part. Clear cut guidelines should be given to allow C form in case of the seller on the basis of invoices included in C form for one quarter or another. The sellers who have no control over the accounts of the purchaser or the rules in other states suffer in absence of clear provision or guidelines.

Suggestions

Even if the introduction of GST is delayed from 1st April 2010, CST rate of tax should be reduced to nil from 1st April 2010.

ii) Issuing C Forms under Central Sales Tax Act

(a) The above subject has caused lot of difficulties, trouble and harassment to the honest dealers. For better understanding of the problem, we would like to bring to your kind attention some of the facts before making any suggestions.

The Central Sales Tax Act, 1958 provides for concessional rate of tax in respect of inter-state sales between two registered dealers for specified purposes of business. In order to ascertain that the transaction is with registered dealer in another state for specified business purposes, Central Sales Tax Act and Rules have provided a mechanism of issuing of C form. C forms are to be obtained by the purchasing dealer from State Government. As per the provisions of Section 13 (4) (e) of the said Act, State Governments have been authorised to make rules for issuing C forms. Most State Governments in order to avoid misuse of C forms have prescribed many conditions. The conditions are to be fulfilled by the purchasing dealer and if for any reason he fails to do so then the sufferer is the seller of goods in other states. So the mechanism as it operates today has resulted into punishment to the innocent persons.

Cause of grievance

Though it is mentioned in the Act that Rules shall be consistent with the Act, most of State Governments have placed unreasonable conditions like heavy deposit/bank guarantee, restriction on number of forms per dealer at a time to the purchasing dealer for obtaining C forms. State Governments have failed even to print adequate number of C

forms. Having assumed the responsibility of issuing C forms, the State Government ought to issue these forms as per the needs of the individual dealer.

In any case the seller who has to bear the burden of extra demand on account of failure to obtain C form is helpless to do anything. In fact, he is not aware of the rules and conditions in other states. This position needs urgent correction.

Suggestions

It is, therefore, suggested that the CST Act shall provide for full mechanism for issuing C forms and it shall be made mandatory on the State Governments to ensure supply of sufficient quantity of C forms considering the national policy on C forms.

However, on introduction of GST, Form C and Form F should be abolished in view of the proposed IGST.

(b) Previously, one C form for all the transactions between two dealers in one financial year was allowable. But due to amendment to CST Act, now C form is required to be obtained per quarter i.e. every three month. Hardships to honest tax payers on account of non-availability of C forms have therefore compounded.

We suggest alternative method / mechanism for issue of ‘C’ Form.

1) Dealer to submit quarterly statement of purchases against C forms

2) State Governments shall be duty bound to issue within 10 days as many no. of C forms as is required by the purchasing dealer on the basis of interstate purchases made by him against C forms.

Sales Tax Department of the Government of Maharashtra has already put in place the mechanism to issue adequate C forms and dealers making application are getting C forms within a reasonable time. The procedure is cumbersome and has scope for improvement nevertheless better than not getting forms.

The position of other forms under CST Act like E1/E2/F/H is similar to that of C Form as described above. Hence, the National Policy also should cover these forms.

Annexure-1

Ref. No. CCC-5H/09 **Date: 20-11-2009**

Dr. Asim Kr.Dasgupta
Hon'ble Minister of Finance
Govt. of West Bengal
Writers' Buildings
Kolkata - 700 001

Respected Sir,

On behalf of Calcutta Chamber of Commerce, we have pleasure in forwarding for your kind consideration a Memorandum giving our suggestions and comments on “First Discussion Paper on Goods and Services Tax in India”.

Thanking you,

Yours faithfully,

S.K. Agrawal

SUSHIL KR. AGRAWAL

Encl. As above.

CALCUTTA CHAMBER OF COMMERCE

Views and Comments on First Discussion Paper on Goods and Services Tax in India

At the outset we congratulate you for bringing out the First Discussion Paper on Goods and Service Tax in India under your Chairmanship of the Empowered Committee of State Finance Ministers. No doubt indirect taxes in India will be having a new sun and the object of the Central Government and the Empowered Committee is laudable.

We are pleased to present our views and comments as under:

1. **Absence of rates of GST**: Since Rates of GST had not been disclosed in the discussion paper, it is difficult for us to finalise and provide our suggestions on the basic issue of costing or addition to cost. However, we would like to mention here that the rate of tax, be it in place of excise or customs or service tax or VAT, should not be more than the existing levy.

   For example, present rate of service tax is 10% for all categories of services. Both CGST and SGST would be applied for levy of service tax. Therefore, the aggregate of both application of tax should not exceed the present level of 10% of tax. In other words it may be 5% CGST and 5% SGST or any other rate aggregating to 10%.

The 13th Finance Commission Chairman Shri Vijay Kelkar stated, while addressing the FICCI's National Executive Committee meeting in New Delhi on 12th October, 2009, – ***"Our manufacturing sector is one of the highest taxed sector in the world. Even a 2% deduction in production cost will increase profit by 20%, giving headroom for reducing prices and benefiting en-users."***
[Source:http://news.webindia123.com/news/articles/india/20091012/1360168 html]

2. **Attempt to remove cascading effect of tax (Tax on Tax)**:

The major thrust for introduction of GST is to remove the bottlenecks in removal of tax on tax problem and related burden of the cascading effect of tax. On introduction of VAT in place of states sales tax levies, burden of Central Sales Tax (presently rate of tax is 2%) problem of cascading effect could not be removed. It appears from the study of First Discussion Paper that input of IGST can not be set off against SGST and others as appears from following table.

SET-OFF/ADJUSTMENTS OF GST NOT ALLOWED UNDER PROPOSED

DUAL GST MODEL

Output	Input
CGST	SGST
CGST	IGST
SGST	CGST
SGST	IGST

It was expected that on introduction of GST, the goal of removal of cascading effect of tax would be removed in toto, but this expectation is yet to be fulfilled.

3. In the present law the payment of service tax of input service of a trader is a cost and not vatable against output tax, since traders in general, has no output tax under service tax law or under excise law. It appears that even under the proposed GST model this grievance of trader community would not be addressed and removed. We feel that no indirect tax should be cost to traders who acts as intermediaries. We will appreciate Sir, that no consumer goods can reach the users and consumers from the manufacturers without effective role of traders. Ultimately the consumers in general who has to bear the cascading effect of tax on their shoulders.

4. **Taxes Subsumed under GST**

While looking at the list of taxes subsumed under GST, we find that Octroi and Profession Tax had been left out from SGST. We propose that both should be included in SGST list, even if a separate rate is fixed within SGST in order to avoid multiplicity of furnishing the returns, challans and facing the assessment procedure.

5. In the discussion paper goods has been discussed at various places but very few matters are covered for services, which is one of the prime source of revenue of Central Government. Therefore, what is the fate of service tax levy under GST module is totally in dark to the trade, industry and commerce. It requires little elaboration in the final White Paper on GST.

6. **Transition Provisions** are required to be discussed in the White Paper about treatment of stock as on date of transaction, closing balance of CENVAT credit line, where and whom to approach for CGST and SGST and so on.

7. **Key infrastructure sector and financial service sector i.e. real estate, power, insurance** does not find any place or discussed in the discussion paper not there is any reference to works contract, stamp duty etc. which directly hit the real estate sector.

8. **Composition Scheme**

   Under the composition scheme Rs.50 lacs has been declared as cut off point of gross annual turn over. In this regard attention is drawn to the Draft Direct Tax Code which would replace the Income Tax Law from 1st April 2011, referred 14th Schedule for determination of income on presumptive basis. In this case the cut off turn over or gross receipts of the assessee in a financial year from the business is Rs. one crore.

   Therefore, it is suggested that harmony should be maintained between Direct Tax Code and GST and maintaining the harmony the code of point should be increased from 50 lacs to Rs.1 crore under composition/ compounding scheme for the purpose of GST.

9. **Purchase Tax**

   Purchase Tax has been left out from GST. It amounts to putting additional burden on a dealer to furnish a separate return under Prof Tax Act, Payment of challan, facing tax assessment procedures, maintaining separate set of registers and records and so on. We strongly object for multiplicity of administrative responsibility on the shoulders of trade and industry people on this count. We feel that purchase tax must be subsumed under GST along with VAT.

10. **GST on Exports**

Export has to be zero rated and same benefit must be provided to Special Economic Zone (SEZ) and 100% Export Oriented Units (EOU), sales in between SEZ units or EOU units or in between SEZ and EOU units. Moreover sales by dealers of Domestic Tariff Area (DTA) a tax on exporters which causes claim for refunds in the hands of exporters. There is big bottleneck under the present system in process of refunds. This bottleneck must be addressed and proper solution is required to be given to the exporters.

11. **Industrial Incentives & Special Industrial Area Scheme**

After the introduction of GST, the tax exemptions, remissions etc. related to industrial incentives should be converted, if at all needed, into cash refund schemes after collection of tax, so that the GST scheme on the basis of a continuous chain of set-offs is not disturbed.

Regarding Special Industrial Area Schemes, it is clarified that such exemptions, remissions etc. would continue up to legitimate expiry time both for the Centre and the States. Any new exemption, remission etc. or continuation of earlier exemption, remission etc. would not be allowed.

12. **Date of introduction of GST:**

Although the target date for implementation of GST is 1st April, 2010, as on date neither Bill has been placed before the Parliament nor a Draft Model of State GST legislations has been released for inviting views of the Trade, Industry and Commerce & all other stake holders. Moreover, after enactment of a new law it requires notification of Rules. The time being very short in hand, the implementation date may be postponed to 1st April, 2011 and in the meanwhile it should be ensured that by 31st March, 2010, the Draft Bill and Rules are published in public domain and views of all concerned i.e. tax payers and tax gatherers (administrator) are invited and after full consultation and consideration thereof the enactment is made. At the same time taxpayers' education and tax gatherers proper training, implementation of information technology in tax administration would be required which will consume considerable time.

S.K. Agrawal

Dated: 21st November 2009. President.