# PRE-BUDGET MEMORANDUM ON UNION BUDGET 2008-2009

## I. DIRECT TAX

***Income Tax***

### 1.a) <u>CAPITAL GAINS</u>

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 10 %, 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 assessees 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 a 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.

**1.b) CAPITAL GAINS (SEC.50C)**

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 Judgement 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.

**2. <u>TDS – SECTION 194C</u>**

Every assessee who deducts TDS under section 194C is required to furnish a quarterly return through computer media as required by section 206. The deductor is required to give the PAN of all the deductees while furnishing the quarterly returns. It may so happen that a number of deductees are not assessed to income tax for the simple reason that their total income is below the taxable limit and therefore do not have any PAN.

Recently it has been reported that from the quarter ended September 30, 2007 the Income tax department would not accept TDS returns for payment other than salary with less than 70 per cent of PAN data.

There is no provision in the Income Tax Act whereby the deductor can avoid TDS u/s 194C in cases where the deductees have income below the taxable limits. In such cases, the deductor is in a very piquant situation as because such deductee cannot provide PAN and therefore the TDS returns of the deductor is not accepted.

**Suggestion**

- The Chamber suggests that the provision of no deduction at source or deduction of lower rate of tax at source under Section 197 A should be amended to cover deduction under Section 194C along with existing provisions.

- A self-declaration like 15G and 15H should be introduced where the deductee is having income below taxable limit and he is not required to obtain PAN under the provision of the Act. It will reduce maximum grievances of tax deductors at large.

3. **<u>FRINGE BENEFIT TAX</u>**:

The Chamber feels that the tax payers are not basically against taxation of perquisite or Fringe Benefit provided by an employer to its employee. But the charge of Fringe Benefit Tax on deemed Fringe Benefit, 16 items of expenditure listed U/S 115(WB)(2) Act, is a root cause of grievances from Trade, Industry and Commerce, where the expenditures are taxed under Fringe Benefit Tax which have no connection with perks provided by the employer to employee.

**Suggestion**

It is, therefore, suggested that the government should abolish Fringe Benefit Tax on deemed basis.

## 4. DEFINITION OF TERM "MANUFACTURE"

The Income Tax Act 1961 does not provide any definition of the term "manufacture". But to provide incentives to various industries under different sections of the Act, exemption has been granted from date of commencement of production to the industrial units for manufacture of any article or thing. There are a large number of cases which centers around the meaning of the term manufacture. The taxpayers consider **processing** as part of manufacture and the tax collectors do not consider the activity of processing as included in the term manufacture. But there are various provisions in the Income Tax Act itself where vide explanation the term manufacture has been explained which include processing. There is no uniformity of application of this definition throughout the Act. Moreover, the intention of the Parliament is evident from the new Special Economic Zone Act where the term manufacture has been defined which includes processing besides other activities.

**Suggestion**

It is, therefore, suggested that the term manufacture should be defined in the Income Tax Act as well following the latest enactment of Special Economic Zone Act by the Parliament.

## 5. 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 2 years from the end of relevant assessment year, similar time limit should be fixed for completion of assessment of TDS Return 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 lac to Rs.2.5 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. <u>SETTLEMENT COMMISSION (245D)</u>

At present the settlement commission has no power to reduce or waive interest statutorily payable u/s. 234A, 234B and 234C except relief granted by CBDT by way of circular u/s.119 of the Act.

**Suggestion**

It is suggested that Section 245D should be suitably amended to empower the Settlement Commission to waive interest payable under the provision wherever the particular case is fit for the same.

## 5. <u>INCOME TAX APPEALS (SEC.246A)</u>

- 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.

**<u>Suggestion</u>**

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) and rejection of application for certificate u/s. 80G.

**<u>Suggestion</u>**

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. MAXIMUM TAX RATE SHOULD BE 25% FOR CORPORATE AND NON-CORPORATE

**Suggestion**

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.

## 2. INCOME TAX EXEMPTION LIMIT (NIL TAX) BE RAISED

Due to rising tax compliance level and significant upsurge in direct tax collections on the back of a booming economy, Calcutta Chamber would be in favour of raising the existing Income Tax exemption (nil rate) from Rs. 1,10,000/- to Rs. 1,50,000/-. First Tax slab of 10% should be from Rs. 1,50,001/- to Rs. 2,00,000/-.

## 3. 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.

**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.1,85,000/- to Rs.2,50,000/- and for deduction U/s 80D for Medical Insurance Premium, the limit should be increased from Rs.15,000/- to Rs.25,000/-.

## 4. 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 then 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 which is not more than 9.5% in the current scenario. 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.

5. **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 33.66% (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 in view of buoyancy in indirect tax collection in the shape of excise, customs and service tax.

6. **DIVIDEND DISTRIBUTION TAX**

**Suggestion**

Dividend Distribution at present is taxed @12.5%. 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 7.5%.

**7.** **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".

## 8. 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.

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

Sub Section (iia) in Section 32(1) which 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).

## 10. 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.

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

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. For example, if the assessee has gone, say from Mumbai to Delhi, and has to pay his hotels bills, say to ITDC Hotel, which is in excess of Rs.20,000/- and if, he has no option except to transaction is beyond doubt and the identity of the payee can never be questioned. If the assessee makes payment for air tickets, say to Air India, in cash in excess of Rs.20,000/-, the same would also suffer 20% disallowance. 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.

**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/-.

## 12. 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.

## 13. 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**

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.

## 14. 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.

## 15. 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.

## 16. 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.

## 17. DEDUCTION ALLOWED U/S 80C OF INCOME TAX ACT TO BOOST INVESTMENT

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.

## 18 RESTRUCTURE OF SECTION 80G

- The needs of the country for philanthropic help, where nearly 30% population lives below poverty line, are vast. It is, therefore, necessary that the process of getting tax benefit for donors is rationalised and simplified.

- Presently for entitlement of 100% deduction, the section 80G has to be amended. Some institutions, in whose cases 100% deduction is allowed, are of relevance only for some time, after which they lose relevance, as no contributions are made to these institutions, but their names continue to remain in section 80G because of amendments made. The instances are:

(i) Prime Minister's Armenia Earthquake Relief Fund;
(ii) The Africa (Public Contributions' – India) Fund;
(iii) The Maharashtra Chief Minister's Relief Fund during the period October 1, 1993 and ending on October 6, 1993 or to the Chief Minister's Earthquake Relief Fund of Maharashtra.
(iv) The Andhra Pradesh Chief Minister's Cyclone Relief Fund.

No contributions are made to such funds after sometime, when the need for relief vanishes, but their names continue to figure in section 80G making the section look long-winding and complex.

**Suggestions**

- To avoid situations of the above nature, the government should delegate power for notifying, with FM's approval, institutions entitled for donations for which taxpayers can claim 100% deduction (whose names now have to be incorporated in section 80G by amendments through annual Finance Acts) to the CBDT.

- The list of these can be incorporated in the I.T. Rules, 1962. A copy of the notification, containing such names, can be placed in both the Houses of Parliament. The names can be deleted by notifications by the CBDT, if the Institutions' need for funds vanishes because of efflux of time or on other grounds. This would be a more convenient and time saving method for giving tax relief for contributions in deserving causes.

- The 10% limit for getting tax benefits needs to be removed. There seems to be no justification for curtailing one's desire to contribute to noble causes.

- Benefit presently available for cash donations should be extended to donations in kind also.

**19. BANKING CASH TRANSACTION**

i) The basic concept proposed under chapter 17 of the Finance Bill as an anti evasion tax measure and mopping up the black money is totally wrong, because withdrawals from the bank are taxed money and no bank money can be treated as black money.

ii) Black money is not kept in bank account. There are a number of cash withdrawals for legitimate business expenditure such as workers wages, day to day expenditure of factories, officers etc., procurement of cash, payment to transporters and so on.

iii) Levy of cash transactions tax will encourage the depositors too not to put legitimate tax paid money into the bank accounts.

iv) The existing mechanism of cash withdrawal or deposit in excess of Rs.50,000, or in some cases in excess of Rs.10 lac in the banking system, takes care of audit trial for the purpose of anti tax evasion measure. Therefore, there is no necessary of levying another tax in the form of mopping up the black money.

**Suggestions**

If at all, the government does not consider withdrawal of BCTT, at least limit should be enhanced as under:

| Category | Present limit | Proposed limit |
|---|---|---|
| Individual | 25,000 | 1 lac |
| Other than individual | 1 lac | 10 lacs |

## 20. 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.

## 21. 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. The necessary amendment to this effect may be made by inserting second provision to Section 147 of the Act. 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.

**22. <u>SECTION 154 (RECTIFICATION OF MISTAKES)</u>**

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.

**23. <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.

## 24. INTEREST UNDER SECTION 234A

Under section 140A of the Act, an assessee is liable to pay tax on self-assessment and proof of payment of such tax is required to accompany the return of income. 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 while calculating the interest payable by the assessee.

## 25. 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 1.25% of the shortfall as interest under Section 234C. In other words, he would be paying 1.25% 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.

**26. <u>INCOME TAX REFUND (SECTION 244 & 245</u>)**

**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.

**27. <u>SECTION 244A</u>**

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 return 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.

## 28. INTEREST ON DEMANDS & REFUNDS

On refunds the assessee is entitled to interest at the rate of 0.75% per month whereas the Government charges interest on @ 1.25% per month.

**Suggestions**

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

## 29. 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.

## 30. DUE DATE FOR FILING OF RETURN OF INCOME

The due date for filing of Return of Income for audit case/Non-corporate assessee and corporate assessee is at present 31$^{st}$ October. This date clashes with festivals like Dewali, Durga Puja, Chhat Puja etc. which is widely celebrated by a large part of taxpayers.

**Suggestions**
It is, therefore, suggested that the due date should be amended to 30$^{th}$ November.

## 31. DISALLOWANCE OF EXPENDITURE IF TAX NOT DEDUCTED/PAID AT SOURCE

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 deductor.

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 $31^{st}$ May, the last date for payment of Taxes for the year ended $31^{st}$ March or if paid in the month of June in next year, such deductions or expenses claimed will not be allowed.

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.

***FOR EXAMPLE***

A Lorry Contractor takes the lorry from the market regularly and carries on the business of transport. He is to deduct Tax @ 1% from the sub - contractor and on which he is being TDS @ 2% as main contractor. His yearly turnover is Rs.20 Cr of which during the month of March 2005, TDS has been deducted on Rs.5 Cr @ 1% from sub-contractor i.e. Rs.5,00,000/- TDS has to be paid latest by 31st May 2005, but for Financial stringency or illness of proprietor/Accountants the Tax could not be deposited on or before 31st May but paid in June 2005. In such case if the expenditure of Rs.5 Cr is added to the total income it will be hardship to the assessee and the tax payable will be heavy - as much as Rs. 1.68 Crores. This provision is therefore harsh & heavy and need to be rectified. In such cases, as in Section 43B, time should be allowed for payment on or before the date of filling for Income Tax Return.

**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.

**32. <u>INFRASTRUCTURE FINANCING ISSUES</u>**

**A. <u>Tax breaks u/s 10(23G) of Income Tax Act, 1961</u>**

Under section 10 clause 23G of IT Act, for companies engaged in infrastructure projects by way of equity or debt or both, their income from such investments is exempt from tax. The withdrawal of this exemption will have adverse impact on the growth momentum.

The worst hit would be institutions who have already made substantial investment in infrastructure projects. The removal of this exemption makes such investments unviable and will act as an impediment for future investments.

The tax benefit also enabled project developers to bring down their borrowing cost. Removal of such a cushion is bound to adversely affect that. In a scenario where interest rates have started hardening, additional upward pressure on rates will only severely impede growth of infrastructure.

According to various estimates, in the next 5 years investment worth USD 150-190 billion is needed only for infrastructure. 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. In this backdrop, we appeal to you to urgently review this matter and re-instate the exemptions.

**B. <u>Capital Gains Tax</u>**

Some companies have made investments in infrastructure bonds and equity. Withdrawal of the exemption available to long-term capital gains will adversely affect such companies by pushing up costs. As a result NBFIs, who are active in this space, would be forced to increase their lending rates thus pushing up the cost of infrastructure.

**C. <u>External Commercial Borrowing (ECB)</u>**

NBFIs are largely dependent on ECBs for raising long-term resources. However, keeping in mind that availability of long-term funding is extremely scarce now, the Chamber request the Government for immediate intervention in relaxing the ECB norms. Otherwise the tight liquidity situation will severely impede the infrastructure building process.

**D. TDS :**

While banks and financial institutions (Fis) are exempt from the **purview of section 194A of I.T. Act**, NBFIs do not enjoy any such benefit and thus have to pay a TDS @ 22.44% (including surcharge of 10% and the educational cess of 2%) on the interest payment made by any borrower. NBFIs should be treated at par with banks and FIs.

If we analyse a typical loan transaction of an NBFI, we may find lending say at 10% and borrowing say at 8%, giving a gross margin of 2%. The interest income of the NBFI will be subject to TDS of 22.44%, implying 2.24% out of 10% will go for TDS deduction, and net inflow post TDS would be 7.76% whereas outflow in respect of borrowing cost would be 8%, thereby implying a negative cash flow of 0.24%.

**E. <u>Asset Recovery</u>**

Sir, we would like to draw your attention to the fact that while NBFIs are complementing the banks' efforts in credit delivery, they are still not at par with banks and FIs in terms of access to asset recovery facilities. NBFIs must equip themselves adequately so that they can minimise their non-performing assets (NPAs). In this regard, we appeal to you to bring NBFIs under the purview of the SARFAESI Act and NBFIs should also be allowed to take recourse to debt recovery tribunals (DRTs).

**F. <u>Minimum Alternate Tax (MAT):</u>**

Raising MAT on 'book profits' from 7.5% to 10% translates into an effective increase from 8.41% to 11.22% (inclusive of 10% surcharge & 2% education cess) and this will have a greater impact on company bottomlines. Since infrastructure creation is now a national priority, we request you to maintain a status quo on MAT at least for such companies which are into financing of infrastructure projects and equipment.

33. **<u>SEZs and 100% EOUs – Extension of IT Exemption</u>:**

**Suggestion**

Extension of time limit u/s 10A and 10B of the Act beyond 31st March 2009 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.

## D. NEW LEGISLATION

(i) Through the Press Media we understand that the government is in the process of drafting a new Income Tax Act instead of making amendments to the existing Act. Besides the Hon'ble Finance Minister had already announced in his budget speech while announcing the budget for the year 2006-07 on the floor of Parliament that Goods and Service Tax (GST) shall be introduced w.e.f. 1st April, 2010.

As per the media reports, the new legislation for Goods and Service Tax (GST) is in the final stage of drafting and the Hon'ble Finance Minister had announced through Budget Speech on the floor of Parliament that Goods and Service Tax (GST) shall be introduced w.e.f 1st April, 2010.

**Suggestion**

While introducing VAT law, the Government has published a white paper on the same. Our Chamber suggests that the Empowered Committee on GST should publish a white paper and invite suggestions and comments and provide opportunity for discussions among Chambers of Commerce, Industrial Associations, Taxpayers, Tax collectors and Govt. Officials. The aim should be that there should be no room for any ambiguity and the law should be crystal clear and should not lead to litigation either from the tax administrator side or from the side of taxpayers.

## E. WEALTH-TAX ACT, 1957

**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 therefrom 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.

# II. INDIRECT TAX

## A. SERVICE TAX.

**(i)** **RATE OF SERVICE TAX:** The levy of 12% 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**

The statutory definition provided in Section 65(25a) of the Act is allowing differential treatment for same category of Services Providers between the Employers Association (Chamber of Commerce, Federation etc) and Employees Association (Trade Union). Employers and Employees both are contributing equally to the growth of the nation and GDP of the country. Then why there is differential treatment given to two Sections.

There is no Justification in giving exemption to body of persons, which are associated with Press or Media from inclusion within the term Club or Association and **charging service tax from Chamber of Commerce and Federation of Chambers etc.**

Chambers of Commerce does not render any specific service to its members, unlike a club or an association of the like kind nor its members enjoy any facilities or advantages for the subscriptions they pay. On the other hand, it is the members of Chamber who provide services to the Chamber by voluntarily contributing their expertise to various activities undertaken by the same and attending its meetings at their own expenses. Chamber or Federation is a body constituted to protect and promote the interest of trade and industry and not to provide any specific service, advantages or facilities to its individual members. It is in the nature of a Trade Union of business entrepreneurs, industrialists and professionals, formed to protect and promote their common interests thus coming within the preview of exclusion provided for trade unions. It is already accepted as a charitable institution and enjoys tax exemption under the I.T. law. It may also be mentioned that the exclusions also include "services rendered by any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature”. The various activities undertaken by the Chambers of Commerce such as promotion of trade and industry, promotion of international trade, timely dissemination of data/information on latest national and international policies, government legislations and technical developments, generating awareness regarding specific aspects of national economy and business and organizing seminars, workshops and meetings on various economic issues, are all in the nature of public service. In view of above, Chambers should not be required to pay service tax under Section 65(25a) of the Finance Act, 1994, as it does not provide any advantage, facility and any specific service to its members.

Since the Chambers of Commerce perform a positive role and provide social services and bridge the gap between Government, law enforcement agencies and trade, industries & commerce. And therefore, the Chamber of Commerce should be exempted from the levy of service tax under this head from social justification point of view, like Trade Union, Press or Media.

**(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)** **<u>CENVAT CREDIT RULES</u>**: The CENVAT Credit Rules provide for maintenance of separate books of accounts where manufacturers manufacture both dutiable and exempted services, which is not at all practical in any cases. They further provide that where the manufacturers or service providers do not maintain separate records for input services used for taxable and exempted category of goods/services, the input credit shall be restricted to 20% of the output service tax paid/payable during the period. Such ad hoc restriction of 20% is not fair and not justified. We, therefore, suggest that the input credit should be allowed on proportionate basis of manufacture of goods / services provided both taxable and exempted and such provisions should be very specific and unambiguous so that there is no room for any confusion or misinterpretation at field level.

## vi. INFRASTRUCTURE EQUIPMENT FINANCING ISSUES

The problem of service tax on lease and hire-purchase transactions has been a long standing issue for the NBFI sector. We are thankful that you have addressed this issue. However, levying service tax on 10% of the interest component would render the whole effort futile as this does not provide the much needed push required for lease and hire purchase transactions. It is worth highlighting that worldwide lease & hire-purchase have been the most potent forms of capital creation whereas in India, lease & hire-purchase transactions form a very minuscule segment of asset financing.

If we analyse a typical loan transaction of an NBFI, we may find lending say at 10% on a principal amount of say, Rs.100. The interest income would be Rs.10 of which 10% would be subject to an effective service tax rate of 12.24% (inclusive of education cess) i.e. 12.24% of Rs. 1 = Rs.0.124, practically 12 paise only. Thus, the revenue generation from such a levy would be quite insignificant, especially keeping in mind that today in India lease & hire-purchase transactions account for a very small part of all asset-financing cases. Majority of asset-financing is through loans.

Further, value added tax (VAT) of 12.5% is also applicable on the interest component of lease & hire-purchase transactions. Multiple levies will only stifle their growth.

**Suggestion**

Thus, we would appeal to create a more conducive policy framework for lease and hire purchase to foster in India. They can immensely contribute in expediting infrastructure creation.

**vii.** Recently, the Board has clarified issues relating to Authorized Motor Vehicle Dealers and Service Stations whereby the automobile dealers would provide facilities to customers for obtaining automobile finance and Non Banking Financial Companies (NBFC) and to give initiatives to their customers, part of the initiatives to the customers. In the clarification the Board has mentioned that the gross amount received from Bank/NBFC will chargeable to service tax under the head ‘business auxiliary services’.

**Suggestion**

It is suggested that following the CENVAT Rule, where output tax is deposited with input tax, commissions received in such case should be allowed to be deducted from commissions passed on to the customers (who are buyers of such import vehicle against availing such financial credits).

viii) The levy of Service Tax on goods transportation by roads is acceptable by the service receivers. But for the purpose of enforcement of levy, the service receivers have been notified to get registration and pay tax and submit return.

**Suggestion**

This procedural aspect is strongly opposed by our Chamber and we feel that the procedural aspect on this category of service should be executed by Service Providers and not by the Service Receivers.

## B. <u>CENTRAL SALES TAX</u>

### i) 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.

**<u>Suggestions</u>**

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.

(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.

**ii) 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 29$^{th}$ March with an invoice dated 29$^{th}$ March. The Goods are received by B on 5$^{th}$ April. B records the purchases on 5$^{th}$ 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 31$^{st}$ 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.

**<u>Suggestions</u>**

The amendment in the Rules may take time. However, it is suggested that this matter may be thoroughly discussed at the Empowered Committee meeting and State Government may suitably be advised to make available all types of forms in sufficient quantity and to prescribe the procedure for obtaining various forms simple. We at the Chamber are ready to elaborate the points to the Empowered Committee if you consider it appropriate.

iii) **Central Sales Tax (CST) Act Rates** were scheduled to be reduced to 2% from the existing 4% level but the continued disagreement between the Central and State Governments for compensation package has led to its postponement several times. Moreover from the Press news, the Chamber understands that the proposal is therefore to reduce it from 4% to 3% and not 2%. Such trends put up a misleading image of government proposals in the minds of taxpayers.

**<u>Suggestions</u>**

It is, therefore, suggested that although there had been delay in implementing the original proposal for reducing CST Tax Rate to 2%, the government should not change the rate from 2% to 3%, rather it should be strict to reduction of tax to 2% w.e.f. 1$^{st}$ April, 2008 and further it should be reduced to nil as originally promised after one year from the implementation of reduced rate.

## C. EXCISE AND CUSTOMS

### 1. RATE OF EXCISE DUTY

**Suggestion**
Our Chamber suggests that the rate of excise duty should be so regularised whereby raw material and intermediary products rates should not be more than finished products rate.

### 2. CONCEPTUAL ISSUES ON EXCISE

Earlier SSI units used to get Excise Exemption up to Turnover of Rs.4.00 Crores. In this Rs.4.00 Crores, the sale of exempted item was not included. But with effect from 01.04.2003 even sale value of exempted items is considered in the Turnover of Rs.4.00 Crores, due to which many of the SSI units, who are making both the exempted and dutiable goods are unable to avail this facility, making their products un-remunerative and non-competitive. Due to this, many SSI units have become unviable and are on the verge of closure, threatening the employment of thousands of workers in the SSI sector.

**Suggestion**
In view of above, this notification should be amended accordingly.

### 3. LEVY OF EDUCATION CESS

In Union Budget 2004, Education Cess @ 2% had been levied and subsequently in 2006 budget, Higher Education Cess of 1% was levied making a total levy of 3% Cess on aggregate duty. This education Cess of 2% + 1% is payable on CVD and basic Custom Duty on all goods imported into India. But while collecting the Customs Educational cess, the authorities are calculating in a way whereby the Cess is collected twice on CVD and Educational Cess on CVD as is evident from the enclosed B/Entry no. 255976 of 25.10.2005. In the enclosed B/Entry, a sum of Rs. 13687.70 has been charged towards the Customs Education cess which works out to be @ 5.59% over basic Custom Duty instead of 2%. The Customs Education cess is calculated and collected on total sum of Basic Custom Duty + CVD + Educational cess on CVD, whereas the Educational cess on CVD ( Rs 8618.50) has already been charged separately.

(2) Another anomaly in the case of recovering Education Cess is in cases where basic Import Duty is debited through DEPB route. As per order of the Honorable High Court, the Education Cess is not recoverable where the Import Duty is debited to DEPB license. But, while recovering the same, the amount is debited to the DEPB license and also collected in cash, as is evident from the B/Entry no. ……….

| | |
|---|---|
| Assessable value | Rs 30,56,478.42 |
| | ----------------------------- |
| Basic Customs Payable @ 10% | Rs 3,05,647.84 |
| 2% Education Cess on import duty | Rs 6,112.96 |
| | ------------------------------- |
| | Rs 3,11,760.80 |
| Amount debited to DEPB license | Rs 3,11,760.80 |
| | ------------------------------- |
| CVD | Rs 5,37,940.20 (1) |
| 2% Educational cess on CVD | Rs 10,758.80 (2) |
| Customs Education Cess @ 2% | Rs 10,973.98 |
| [ Charged on sum at (1) & (2) ] | ---------------------------------- |

Thus the sum of 10,973.98 charged as shown above is charging cess twice on CVD + Cess on CVD. As per High Court order Educational Cess on Basic Custom is not payable when the Custom Duty is debited to DEPB license. Further if the same is debited to the DEPB license, why the same is again recovered separately as is done in the above case.

A Xerox copy of the order of High Court is enclosed and marked 'A'.

3) Re.: Submission of an Undertaking and Certificate for remittance of value of IMPORTS.

As per Circular No. RBI/2007-08/100/AP/DIR-SERIES Circular No.: 03 dated: July 19, 2007 issued by RBI, the importers are required to submit a Certificate for the Chartered Accountant, Certifying the amount of Tax Deducted and Paid by the Importer.

The above circular refers to section 195 of the Income Tax Act 1961 which reads as under:-

> "Any person responsible for paying to a non-resident, not being a company or to a foreign company, any interest ( not being interest on securities ) or any other sum chargeable under the provision of this Act shall, at the time of credit of such income to the account of the payee of at the time of payment thereof in cash or by the issue of a cheque of draft or by any other mode, whichever is earlier, deduct income tax at the rates in force."

Form the above we feel that Tax Deduction is required from remittance of income being either "interest" or "any sum chargeable under the provision of Income Tax Act."

including business income to a Non-Resident Indian or a foreign company carrying on business in India.

Our remittances do not cover any of the above category. Our remittances are only payment of the value of the goods purchased and imported from foreign company and not a remittance to a foreign company carrying on business in India of any income chargeable under the Income Tax Act.

Payment of bills for import of goods made by the remitter (importer) to foreign company is not an income and hence the provision of Sec. 195 read with rule 29(B) are not applicable to us.

**Suggestion**

In view of the above, submission of an undertaking and a certificate from the Chartered Accountant is not applicable to us and adds to the cost and avoidable harassment. Hence, this requirement should be eliminated.

# INDEX


| SL.NO. | TITLE | PAGE NO. |
|---|---|---|
| **I.** | **DIRECT TAX (INCOME TAX)** | |
| **1.** | CAPITAL GAINS | **1** |
| **2.** | TDS – SECTION 194C | 3 |
| 3. | FRINGE BENEFIT TAX | 3 |
| 4. | DEFINITION OF TERM “MANUFACTURE” | 4 |
| 5. | TIME LIMITS | 4 |
| **B.** | **NEW PROPOSALS** | **5** |
| 1. | INCOME HEAD SALARY | 5 |
| 2. | ACCOUNTABILITY OF THE ASSESSING OFFICER | 5 |
| 3. | SECTION 143 | 5 |
| 4. | SETTLEMENT COMMISSION (245D) | 6 |
| 5. | INCOME TAX APPEALS (SEC. 246A) | 6 |
| **C.** | **AMENDMENTS IN THE EXISTING PROPOSALS** | **7** |
| 1. | MAXIMUM TAX RATE SHOULD BE 25% | 7 |
| 2. | INCOME TAX EXEMPTION LIMIT (NIL TAX) BE RAISED | 7 |
| 3. | AGE LIMIT & NIL TAX SLAB ETC FOR SENIOR CITIZENS | 7 |
| 4. | TDS LIMITS | 7 |
| 5. | LEVY OF SURCHARGE AT 10% | 8 |
| 6. | DIVIDEND DISTRIBUTION TAX | 8 |
| 7. | SECTION 30 & 31. | 8 |
| 8. | SECTION 32 : ADDITIONAL DEPRECIATION | 9 |
| 9. | DEPRECIATION ALLOWABLE U/S 32(1) (iia) OF THE ACT | 9 |
| 10. | SECTION 36(I)(III) | 9 |
| 11. | SECTION 40A(3) AND RULE 6DD(J) | 10 |
| 12. | SECTION 40(B) | 10 |
| 13. | SECTION 44AB | 11 |
| 14. | SECTION 44AF | 11 |
| 15. | SECTION 72 | 11 |
| 16. | SECTION 801A/801B : MAT | 11 |

| SL.NO. | TITLE | PAGE NO. |
|---|---|---|
| 17. | DEDUCTION ALLOWED UNDER SEC. 80C | 12 |
| 18. | RESTRUCTURE OF SEC 80G | 12 |
| 19. | BANKING CASH TRANSACTION | 13 |
| 20. | SECTION 133A | 11 |
| 21. | SECTION 147, 148, 149 | 14 |
| 22. | SECTION 154 | 15 |
| 23. | MAT CREDIT AND INTEREST UNDER SECTIONS 234A, 234B AND 234C | 15 |
| 24. | INTEREST UNDER SECTION 234A | 16 |
| 25. | SECTION 234C | 16 |
| 26. | SECTION 244 & 245 | 17 |
| 27. | SECTION 244A | 18 |
| 28. | INTEREST ON DEMANDS AND REFUNDS | 19 |
| 29. | PENALTY – CHAARITABLE TRUST SECTION 272(2)(E) | 19 |
| 30. | DUE DATE FOR FILING OF RETURN OF INCOME | 19 |
| 31. | DISALLOWANCE OF EXPENDITURE IF TAX NOT DEDUCTED/PAID AT SOURCE | 20 |
| 32. | INFRASTRUCTURE FINANCING ISSUES | 21 |
| 33. | SEZ & 100% EOUS – EXTENSION OF IT EXEMPTION | 23 |
| **D.** | **NEW LEGISLATION** | **23** |
| **E.** | **WEALTH TAX ACT 1957** | **24** |
| **II.** | **<u>INDIRECT TAX</u>** | |
| 1. | SERVICE TAX | 25 |
| 2. | CENTRAL SALES TAX | 28 |
| 3. | EXCISE & CUSTOMS | 30 |

# CALCULTTA CHAMBER OF COMMERCE

# PRE-BUDGET MEMORANDUM

# ON

# UNION BUDGET

# 2008-2009