Ref. No. CCC-5H/11 **Date: 21-12-2011**

By Speed Post

Shri Pranab Mukherjee
Hon'ble Minister of Finance
Government of India
Central Secretariat, North Block
New Delhi - 110 001

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 various fiscal issues, which may be of help in the preparation of the Union Budget 2012-13.

As per Press Media reports Direct Tax Code Bill is expected to be implemented from 1st April 2012. So far the DTC Bill has not yet been passed by the Parliament. We have forwarded a memorandum to the Standing Committee on Finance which has been entrusted to examine the DTC Bill in detail and report to the Parliament. We are enclosing a copy thereof with request that the same may kindly be considered while the Bill is being enacted in the Parliament in the form of amendment in the bill.

With regards,

Yours sincerely,

ALKA BANGUR
PRESIDENT

Encl. As stated.

CALCUTTA CHAMBER OF COMMERCE

PRE-BUDGET MEMORANDUM

ON

UNION BUDGET

2012-2013

I

INDEX

SL.NO.	TITLE	PAGE NO.
I.	ACCOUNTABILITY	1
II.	INFLATION	1
III.	THRUST ON EXPORTs	2
IV.	**DIRECT TAX**	
A.	**INCOME TAX**	**3**
1.A)	BASIC EXEMPTION FROM PAYMENT OF INCOME TAX	3
1.B)	TAX RATE STRUCTURE	3
1.C)	RATIONALISATION AND SIMPLIFICATION	3
2.	RATIONALISATION OF PROVISION: SECTION 14A OF THE INCOME TAX ACT -	4
3.	CAPITAL GAINS	4
4.	CAPITAL GAINS (SEC.50C)	5
5.	TDS CREDITS IN THE HANDS OF DEDUCTEES	6
6.	TIME LIMITS	7
B.	**NEW PROPOSALS**	
1.	ACCOUNTABILITY OF THE ASSESSING OFFICER	8
2.	SECTION 143	8
3.	INCOME TAX APPEALS (SEC.246A)	8
C.	**AMENDMENTS IN THE EXISTING PROPOSALS**	
1.	LEVY OF SURCHARGE AT 10%	9
2.	DIVIDEND DISTRIBUTION TAX	9
3.	INCOME DEEMED TO ACCRUE OR ARISE IN INDIA - SECTION 9(1)(VII)	9
4.	ENHANCEMENT OF EXEMPTION LIMIT FOR MINOR'S INCOME CLUBBED WITH THE PARENT	10
5.	MINIMUM ALTERNATE TAX (MAT) U/S 115JB	10

II

SL.NO.	TITLE	PAGE NO.
6.	MINIMUM ALTERNATE TAX (MAT) U/S 115 JB	11
7.	DEEMED DIVIDEND [SEC.2(22)(E)]	11
8.	INTEREST ON HOUSING LOANS FOR SELF OCCUPIED PROPERTY	11
9.	SECTION 30 & 31	12
10.	SECTION 36(1)(III)	12
11.	SECTION 40(B)	13
12.	SECTION 44AB	13
13.	SECTION 44AD	13
14.	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.	14
15.	SECTION 56(2)	14
16.	SECTION 72	14
17.A)	EXCLUSION FOR LONG-TERM CAPITAL GAINS AND DEDUCTION U/S 80IA/80IB WHILE COMPUTING BOOK PROFIT UNDER MAT	15
18.	MAT CREDIT UNDER SECTION 234A, 234B, 234C	15
19.	DEDUCTION ALLOWED U/S 80C OF INCOME TAX ACT	16
20	TAX ON LONG TERM CAPITAL GAIN	16
21.	TAX ON CAPITAL GAIN - S.112	16
22.	SECTION 147, 148, 149	17
23.	SECTION 154	17
24.	CAP ON INTEREST UNDER THE DIRECT TAX LAWS	17
25.	SECTION 234A	18
26.	SECTION 234C	18
27.	ALLOWABILITY OF INTEREST PAID UNDER INCOME TAX ACT, 1961	19
28.	SECTION 244 & 245	19
29.	SECTION 244A	20

III

SL.NO.	TITLE	PAGE NO.
30.	INTEREST ON DEMANDS & REFUNDS	21
31.	SECTION 272A(2)	21
32.	DISALLOWANCE OF EXPENDITURE IF TAX NOT DEDUCTED/PAID AT SOURCE	22
33.	DEFINITION OF CHARITABLE PURPOSE	23
34.	STAY OF DEMAND BY ITAT	24
35.	SHORT TERM CAPITAL GAIN TAX	25
36.	TAXATION ON COST INPUT	25
37.	MAJOR CONCESSIONS FOR MASS AFFORDABLE HOUSING	26
38.	PROMOTION OF RENTAL HOUSING TO CREATE SUPPLY FOR DIGNIFIED ACCOMMODATION TO MASSES WE NEED TO PROMOTE RENTAL HOUSING	26
39.	PAYMENT OF DOUBLE STAMP DUTY ON SALE OF APARTMENTS/OFFICES:	26
D.	**WEALTH TAX ACT 1957**	28
IV.	INDIRECT TAX	30

PRE-BUDGET MEMORANDUM ON UNION BUDGET 2012-2013

I. INTRODUCTION OF PERFORMANCE JUDGEMENT MECHANISM (ACCOUNTABILITY)

We would like to stress upon the need of accountability regarding allocation of budgetary expenditure and actual funds under each head. The resources of funds are scare and requirements of funds are more because of developmental activities including infrastructure. The need of hour is optimum use of limited resources of funds. It requires plugging the loopholes, leakage of revenue generation and utilization and distribution of fund.

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. 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.

II. INFLATION

Presently inflation is measured by wholesale price index where weightage of essential food articles are not appropriately reflected. Inflation index (WPI) does not reflect such inflations through its index. Recent price rise in food articles and other consumer products are result of demand-supply imbalance and lack of accountability and leakages in 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.

III. THRUST ON EXPORTS

A number 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.**

IV. 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	2.50	4.5
Women below 65 yrs	1.90	3.6
Others (Indv./HUF/AOP/BOI)	1.80	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%. 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.8 lacs (above basic exemption)
20%	Rs. 8 lacs – Rs. 15 Lacs
25%	Above Rs. 15 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) 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. 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 litigations 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, section 14A and Rule 8D requires a total overhaul.

3. 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.**

4. 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 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 repealed 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.

5. TDS CREDITS IN THE HANDS OF DEDUCTEES

The endeavor of tax department to introduce paperless TDS Certificates are yet to achieve its desired goal, as there are mismatch of data between TDS Certificates issued by Deductors, TDS statements uploaded on TIN system and bank payment details, PAN Nos. of the deductees. In every mismatch case, PAN wise deductee ledger does not show full TDS credits. In all such cases deductees are most sufferers, where the default lies in majority of the cases either in the hands of deductors or in the hands of bankers or in the TIN system itself.

Suggestion

In view of the current chaotic situation, it is suggested that so long the TIN and TDS systems are 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.80-G:** Issue of certificate on receipt of the application for grant of a certificate in favour of Charitable Trusts.

- Issue of appeal order by CIT (Appeals).

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. 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.

2. 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 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 assessee, 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.**

3. 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. LEVY OF SURCHARGE AT 10%

Surcharge is levied on domestic companies @5%, where income exceeds Rs.1 crore as against 2% on foreign companies, where income exceeds Rs.1 crore. This is highly unjustified on domestic companies.

Suggestion

It is suggested that surcharge on domestic companies should be reduced to Nil, since the levy of Education Cess and Higher Secondary Education Cess is additionally charged on the levy of tax.

2. DIVIDEND DISTRIBUTION TAX

Suggestion

Dividend Distribution at present is taxed @15% plus SE, EC & SHEC. 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%.

3. INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – SEC 9(1)(VII) BY WAY OF FEES FOR TECHNICAL SERVICES

The foreign lawyers and foreign law firms are presently not allowed to practice in India and or able to establish office or a branch in India. To get around this situation and the present position of law, the foreign law firms have primarily adopted two different routes- (a) Visiting India and operating from hotel rooms

(using the hotel facilities such as conference rooms and business centers), (b) Establish good relationship with Indian firms and the foreign lawyers sit in the offices of the Indian law firms attending to the client and/or to the clients work.

When question of billing comes the invoices are issued by the Foreign Firms or Lawyers from its home country i.e. foreign country. While issuing such invoices they issue certificate that they do not have a place of business or a branch office in India. This enables them to receive the whole of the invoiced amount without any withholding tax or payment of taxes.

The Foreign Law Firms thus are not taxed on the income they earn in India or from Indian clients, which would otherwise be taxable as income deemed to accrue or arise in India as per Sec. 9(1)(vii) of The Income Tax Act.

Suggestion

We suggest that the foreign law firms should not be allowed to be paid any fee payment without deduction of tax and the Government should impose tax to be deducted at source at the rate of 30% for any payment made to any foreign law firms/lawyers.

This would enable the govt. of India to increase tax revenue in India, while the foreign law firms would not suffer any loss, as they would have credit under the DTAA.

4. 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. The limit should be linked with inflationary index to take effect of inflation.

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.

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

On introduction of MAT the rate of tax was 7.5% of book profit which was increased to 10% from A/Y 2007-08. The rate was increased to 15% later brought to 18% from Assessment year 2011-12 and again to 18.5% from Assessment year 2012-13.

It is proposed that tax rate should be brought back to 7.5% without surcharge, E.C. & SHEC thereon.

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

Present rate of MAT is 18.5% (which is also applicable to Limited Liability Partnership w.e.f. Assessment Year 2012-13).

Suggestion

Our suggestion is to bring down the rate of MAT to 7.5% without surcharge and E.C. etc. thereof which were fixed at the time of introduction of law.

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

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

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 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. 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.

12. <u>SECTION 44AB</u>

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.60 Lakh in case of business and Rs.15 Lakh in case of profession.

Suggestions

(i) These limits should be fixed at Rs. 1 crore in case of business and Rs.30 lacs in case of profession.

(ii) A print copy of Tax Audit Report along with Statutory Audit Report, in the case of non-corporate 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.

13. <u>SECTION 44AD</u>

Special provision for competitive profit and gains of retail business u/s 44AF has been merged with Sec.44AD whereby 5% presumptive income on turnover is now 8% of total turnover w.e.f. 1.4.2011 where turnover is below Rs.60 Lakh.

Suggestions

It is suggested that a separate rate should be prescribed for business other than plying, hiring or leasing goods carriage as referred to in Sec.44AD i.e. profit and gains of retail business. The rate should be reduced to 5% of the turnover if not 3%.

14. SUBSTITUTION OF COST OF ACQUISITION OF CAPITAL ASSETS-S-55(2)(b)(i) and (ii) - shift date from 1st April 1981 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 1981" be replaced by "1st April 2001".

15. Sec.56(2) and deemed income:

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 2-3 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 on artificial deemed income due to the said tax proposal. We are sure that this is no the intention of Government. **This anomaly must be removed.**

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

16. 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.**

17.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 were 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**

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

- **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.**

18. MAT CREDIT AND INTEREST UNDER SECTIONS 234A, 234B, 234C

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.**

19. 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.

20. 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.

21. 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.

22. 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.**

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.**

30. 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.

31. 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.

32. 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 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 is not easily traceable and as such the tax liability of such persons gets 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.

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

This provision has been substituted by Finance Act, 2010 to read as "…such tax has not been deducted or after deduction tax has not been paid on or before due date specified in section 139(1)". Thus the time limit for payment of TDS deductible in any month during the previous year has been paid before the due date of filing of return of disallowance u/s.40(a)(ia) is to be made. It should have been made effective from the date of original introduction of this provision i.e. Asst Year 2005-06, following the principle of amendment curative in nature, as accepted by the Ho'nble Apex Court in CIT vs. Alom extrusions Ltd. (319 ITR 306).

Suggestion

i) 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.

ii) Amendment brought in this provision by Finance Act 2010 should be declared clarificatory provision as such with retrospective effect from 1.4.2005. It is already been held so by Hon'ble Income Tax Appellate Tribunal, Mumbai Bench as suggested in this proposal.

33. 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:

Medicine shops in Charitable hospitals.
Seminar, conference organised by chambers of commerce or federation for a fee from delegates.
Renting of meeting halls by chambers of commerce to other organisations.

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.

34. 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.

35. 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.

36. TAXATION ON COST INPUT

(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.

37. 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.

38. 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.

39. 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.30 lakhs to Rs.60 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 justifies 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) :

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, 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."

3. MARKET RATE OF JEWELLERIES FOR LEVY OF WEALTH TAX :

For the purpose of levy of Wealth Tax on jewellery, valuation is adopted according to the price which it would fetch, if sold in the open market on the valuation date. The large nos. of assesses are holding jewelleries acquired prior to 1st April 2001. Valuation was less than Rs.4000/- for 10 gram for gold and Rs.7000/- for silver per kg. In contrast to that the valuation as on 31st March 2011

was around Rs.20,000/- per 10 gram of gold and 56,000/- per kilo of silver. It amounts to undue levy of tax on assets acquired & held more than 10 years back.

Suggestion

It is proposed that for the purpose of levy of Wealth Tax wherever the jewelleries are acquired by the assessee prior to 1st April 2001 should be valued as per market rate as on 31st March 2001 and not as per market value on the valuation date. It would provide relief against undue hardship on assessee holding jewelleries for a longer period , who may not be having sufficient income in the current period and if such relief is not allowed, the assessee would be bound to dispose of the jewelleries for payment of Wealth Tax. The raising of exemption limit from Rs.15 lacks to Rs.30 lacks did not provide solution to this problem, as because valuation of landed property had increased manifold during the last decade.

V. INDIRECT TAX

A. Central Excise

1. BASIC EXEMPTION FROM PAYMENT OF EXCISE DUTY FOR SSI UNITS :

Nil excise duty for turnover up to Rs. 1 crore was fixed in the year 2000. The same limit is continuing as on date. Considering the inflationary effect, the basic exemption turnover limit applicable for SSI units should be suitably revised upward, which may be around Rs. 2 crore.

2. Interest payable by the assessee to the Government under Central Excise and Service Tax had been enhanced from 13% p.a. to 18% p.a., while the interest payable by government for delayed refund has been kept at 6% p.a. only.

It is, therefore, suggested that the difference between the interest receivable and interest payable should not be more than 5-6% and the interest payable and receivable rates should be modified accordingly.

B. Service Tax:

Threshold exemption up to Rs.10 lacs was w.e.f. 1st April 2008. Because of the inflationary effect it is proposed that such limit should be raised to Rs.15 lacs and similarly threshold for opening Registration Certificate should be raised from Rs.9 lacs to Rs.14 lacs w.e.f. 1st April 2012.

C. THE RATIONALE OF NOT IMPOSING STAMP DUTY ON COMMODITY DERIVATIVES TRADING

We understand that the Union Government proposes to impose a uniform Stamp Duty on all types of exchange-traded transactions throughout the country. There are immense reasons for not imposing the same on Commodity Derivatives trading in India.

1. It has been thought that the stamp duty can be uniformly imposed on stock and commodity derivatives trading. **However, commodity derivatives, unlike stocks, are not asset classes.** Commodity derivatives in India have been introduced as a hedging instrument to hedge against adverse price movements, and not for earning profits through trading like stocks. Whereas an upswing in the stock market is a result of ‘feel good’ factors, a firm price trend in commodities is a cause of concern for the government and people. It fuels inflation and results in depressed demand and consumption. What farmers and consumers actually need are **stable commodity prices.** An active commodity futures market seeks to achieve precisely that by reducing seasonal and abnormal cyclical swings. Hence,

what might be applicable for stocks or asset classes as such should not be applicable for commodity derivatives.

2. **Stamp Duty will increase transaction costs of trading, add to the cost of risk management and hedging.** It will therefore negatively affect all those who use this platform to manage their cost/revenue related risks. This in turn would create an uncompetitive business environment hampering the growth and profitability of user industries, farmers, traders, etc.

3. Stamp Duty on commodities would add to the already high level of taxation in the commodity sector. These include Mandi Tax, VAT, Excise Duty, Customs Duty, various levies, cess etc. at the central and state governments' level.

4. **Stamp Duty will affect the interests of stakeholders negatively.** Commodity exchanges have acted as refuge for various segments of traders, small and medium enterprises, and other stakeholders, who are exposed to the vagaries of ruthless market forces in the physical segment. The importance of the commodity derivatives markets emerges from two points here. Firstly, bullion and base metals are impacted by international price movements, and are much less insulated and protected than the agricultural commodities. Secondly, Indian stakeholders do not have any other mechanism to hedge the risks that may arise due to vagaries of international trade. The only institution by way of which they may be able to protect themselves is through domestic futures exchanges, as actual hedgers can take only limited positions in overseas exchanges with due approval. Thirdly, it will negatively affect the farm community and associated stakeholders by adding to the cost of risk management for hedgers – including farmers, traders, agro-processors and agri-based industries.

5. **Commodity derivative trading may shift to unofficial and illegal 'dabba trading'**, not only making the markets fail in their economic role of price discovery, but also result in increased socio-economic problems. It is generally felt that the size of the illegal market in commodity derivatives is almost twice that of the one prevailing in the framework of the regulated commodity exchanges. This is primarily due to the cost advantage that such illegal institutions have over the formal institutions of commixes. Those involved in "dabba trading" do not have to fulfil margin requirements; neither need they incur the costs of transactions (transaction fees, etc.) as existing in the formal exchange frameworks. The Regulator, Forward Markets Commission, will be rendered adequate teeth to control the growth of illegal markets, only after the Forward Contracts Regulation Act of 1952 gets amended. Hence, if stamp duty is imposed on the trading of derivatives in commodity exchanges, it will only serve players to move away from the formal exchange set-up to illegal derivatives trading, thereby fuelling the growth of "dabba Trading".

6. **Employment opportunities could be seriously affected.** According to estimates, the commodity derivatives market, along with the ecosystem it breeds,

would generate an employment potential of more than five lakh throughout the country in the next five years. Decline in trade volumes will cause a decline in employment opportunities which would have otherwise grown out of the commodity derivatives industry.

7. By increasing the cost of capital in trading, the levy would reduce market liquidity through decrease in trading volume and increase in bid-ask spreads. Besides, stamp duty is prone to create a divergence between the physical and derivatives markets for commodities. Such divergence will hamper the hedging efficiency at a micro-level, and in the process the price discovery function at a macro-level. These effects have been confirmed by multiple researches conducted across global markets. A research paper found that a hike in the tax rate by 0.2 percentage points in China reduced the trading volume by one-third.

8. **Low liquidity would lead to price volatility and improper price discovery process**. A study by ICRIER proves that a hike in a tax on transactions that increases the transaction costs would adversely affect the market. Trading volumes would go down while market volatility would increase significantly. And as a result of increased costs, commodity markets, which were set up to take India smoothly through the process of globalization, would fail to achieve its fundamental objective.

9. **The increase is against the government's stated policy stand.** The Economic Survey, 2007-08 stated, "Direct participation of farmers in the commodity futures market is somewhat difficult at this stage as the large lot size, daily margining, high membership fees etc. work as a deterrent to their participation in this market." Therefore, imposing additional transaction costs through imposing Stamp Duty would make entry into the commodity futures market much more difficult for the farmers of India.

10. **The primary objective of garnering higher revenues from imposition of high stamp duty may not be met, as experiences of various states show**. There are at least two empirical evidences to prove that. After the Delhi Government imposed Stamp Duty in July 2010, the growth rates in trade volumes started stifling in commodity derivatives have as compared to the previous years. One needs to realize that this also proves counter-productive for governmental revenues. Revenues from stamp duty on commodity derivatives actually increased by **43% from Rs.3.69 crore to Rs.5.26 crore in Gujarat when it *decreased* the stamp duty rates by 90%.** Even the Maharashtra government, which proposed an increase of stamp duty in their 2011 budget from Rs.100 per crore to Rs.500 per crore, has dropped the idea of implementing the same, due to the perceived negative impacts on revenue generation. Pavaskar and Ghosh (2008) analyze the revenue implication for the government of a 0.017% transaction tax. Using the base case of turnover in 2007-08, they find that a fall in trading volume by 25 percent or more, as a result of the tax, would actually decrease the revenue to the

government, whereas a 20 percent fall would increase the revenue by a paltry Rs.47.12 crore.

D. SERVICE TAX ON CHAMBER OF COMMERCE

It has been proposed that the membership fees collected by the Associations and Chambers of Commerce shall be exempted from Service Tax for the period from 16.2.2005 to 31.3.2008. The rational of keeping the date of 31.3.2008 is not known.

It is suggested that the period should be **up to 31st March 2011 in place of 31st March 2008** to mitigate past period liability.