

ALL GUJARAT FEDERATION OF TAX CONSULTANTS
PRE-BUDGET MEMORANDUM FOR 2015-16

1. Section 2(22)(e) : Deemed Dividend

As per the present provision, even if advance or loan is given to a share holder for one day, it is considered as deemed dividend and assessable as income. This provision is very harsh or the addition should be made to the extend of bank interest rate for the period for which the amount was given by the company to the share holder.

2. Section 2(42A) : Defination of long term capital asset

Factory building (Immovable Assets) on which depreciation is claimed and is held for more than 36 months should be considered as Long Term Capital Asset.

3. Section 10(23C) : Educational Institution

Educational institutes substantially financed by government for claiming exempt income be defined which would have more than 50% of revenue.

4. Section 14A : Disallowance of exps. against exempt income

In many case it has been noticed that, disallowance of exps. under Rule 8D is more than the exempted income received by the assessee. It is suggested that this arbitrary working of Rule 8D may be reconsidered or the disallowance should not exceed the amount of income, not forming part of total income.

5. Section 23 of the I T Act : Income from House property

In many cases the assessee is in possession of more than one residential house for his self occupation. More than one property / properties are subject to notional income. This provision needs reconsideration.

6. Section 32(1)(iia) : Depreciation

An amendment should be made in Section 32(1)(iia) of the Act to clarify that where new plant and machinery is acquired in a year and put to use for less than 180 days, it would be eligible for balance additional depreciation @10% in the subsequent year.

7. Section 40(a)(ia) /201(1) : Disallowance of exps.

Proviso to section 201(1) was inserted with effect from 01.07.2012 by Finance Act 2012 granting relief to non deductor of tax by considering them as assessee not in default subject to furnishing of Form 26A from deductee. Similar amendment has been made in second proviso to S.40 (a) (ia) w.e.f 01.04.13. Suitable amendment may be made in order to expressed that the aforesaid amendments are curative in nature.

8. Section 40A(3) : Disallowance of expenditure exceeding Rs.20000/-

As per present provision, if the expenditure is made by cash exceeding Rs.20000/-, the same is disallowable though the expenditure is genuine and identity of both the parties could be proved beyond doubt. Sometimes due to urgent business needs, the expenditure is required to be incurred by cash. In such cases, exceptional circumstances should be provided as per old Rule 6DD (J).

9. Section 44AD : Assessment of business income on presumptive basis

As per present provision of this section, the assessee is required to disclose income @ 8% of total turn over, gross receipts as net business income. This provision was brought in the statute book to give relief to small tax payers from maintaining books of accounts and other documents, papers etc. It has been observed that in some cases even the gross profit is below 8%. If the assesses are dealing in essential commodities, the margin of profit is hardly 3% to 4% as per Government norms and still the assessee is required to disclose 8% net business income or go for audit. Thus the assessee is taxed on artificial/notional income.

The percentage of 8% should be reduced to actual profit or maximum 5% which was previously prescribed u/s. 44AF. When the assessee is dealing in essential commodities like Sugar, Food Grain, Kerosene, where the margin of profit is fixed by Government, in such cases, this provision should not be made applicable.

Similarly when there is specific contract for charging profit below 8%, in such cases also, this provision should not be made applicable.

10. Section 54 : Capital gains

If the assessee purchases two residential houses against sale of one residential house in India, exemption should not be denied as he is investing amount of capital gains and this being a beneficial provision.

11. Section 54F : Capital gains

If the assessee invest net consideration in / in India two residential houses against sale of other capital asset (though he is owner of one residential house) exemption should not be denied as this is a beneficial provision.

12. Section 54EC : Capital gains

The limit of 50 lacs prescribed in this section for investment in specified bonds should be withdrawn and the assessee should be allowed to invest more than Rs.50 lacs as the investment is for the purpose of development of basis facilities for India.

13. Section 56

Gift from out of India to other than relative should be made exempted, subject to investment in Government bonds for 2 years with minimum interest rate of 6%.

14. Section 133 : Disclosure in survey proceedings

Though there are instructions from the Central board that during survey no disclosure should be obtained. The instructions are not strictly carried out. Disclosures and blank cheques are being obtained for the tax worked out by survey party. Due to this practice, correct disclosures are not coming out and there is huge revenue loss. The survey party should collect the incriminating papers/ documents/ accounts and should close survey proceedings.

Specific provision should be made for not making any disclosure after survey proceedings within 30 days.

15. Notice u/s. 143 (2) : Assessment proceedings

Notice of scrutiny should be issued within 6 months from end of the month in which the return is filed (as per old provision) instead of present provision of six months after the end of financial year.

16. Section 143 (3) : Assessment order. Show cause notice

The assessee is not knowing what action the assessing officer is going to take on the papers / documents which are submitted to him in scrutiny assessment. In most of the cases, no show cause notice is given before making any addition. It should be made compulsory when the returned income is not being accepted by the assessing officer. A show cause notice for probable addition/additions must be given.

17. Section 147 : Reassessment on the basis of Audit objection

- A.** Though the law is settled that, reopening proceedings can be initiated when there is satisfaction of the assessing officer that income chargeable to tax escaped assessment. Even on the basis of audit objection on law point, the cases are reopened. There should be specific provision that, no case should be reopened on the basis of audit objection.
- B.** Limit of 6 years for reassessment should be reduced to 4 years /and 4 years to 2 years.

18. Section 153A to 153C : Block Assessment in case of search

While framing block assessment, the additions are made on account of loose papers etc. The concept of real income is never considered while framing block assessment. Whether the undisclosed income mind. Without any cogent proof of investment of undisclosed income, the additions are made on the basis of disclosure made in the statement u/s.132 (4). Without identifying asset or expenditure, no addition should be made in block assessment.

19. Section 200(3): Preparing of Statement of TDS

Appropriate amendment may be made in section 200(3) not requiring deductor to file a statement when no tax is deductible.

20. Section 220 : Recovery of outstanding disputed demand

As per present practice, stay of disputed tax demand is rejected unless 50% of tax is paid. Most of the additions are deleted or substantially reduced in appeals. It should be provided in the act that, no recovery proceeds should be initiated till the first appeal is decided by CIT (A).

21. Section 244A : Interest payable to the assessee

On excess payment of tax by assessee, interest is granted @ $\frac{1}{2}$ % per month or part of month and the **same is taxable**. While interest u/s. 234A, B, C is charged @ 12% per annum. The **same is not allowable as an expenditure**. The rate of interest u/s. 244A should be 12% or it should be 8% tax free.

22. Section 252 : Appeal to Appellate Tribunal

- A.** The limit of income for single member (SMC) should be enhanced to Rs.10 Lac and it should be enhanced gradually for speedy disposal of appeals.
- B.** If the assessee has lost in the first appeal, before hearing of second appeal, minimum 25% of tax should be paid till it is not paid, the appeal should not be heard.
- C.** Power of setting aside the order by ITAT should be withdrawal like CIT(A) and the matter should be decided by ITAT only. If further details / report etc. is required, the same should be obtained within 15 days from lower authority.

23. Section 254 : Rectification by Appellate Tribunal

As per section 154 of the Income Tax Act, rectification order can be passed within **4 years for the end of the financial year** in which the order is passed. While time limit for passing rectification order u/s.254 by ITAT is **4 years from the date of the order**. Time limit for passing order u/s.254 should be in parity with section 154 of the I T Act.

24. Section 264 : Revision of order by commissioner

A. Power u/s. 263 by commissioners is often used against assessee. It has not come to our notice that, powers u/s.264 is used by commissioners suo moto to give relief to the assessee. If this power is judiciously used, it will reduce the work of CIT (A) and the assessing officers will be scared to pass arbitrary orders. Even the work of recovery will be reduced and assessee will get faster justice.

B. Time limit for revision u/s. 263 is two years from end of the financial years in which the order is passed while in case of revision by assessee u/s.264, the time limit is one year from the date of communication of the order to the assessee.

Time limit u/s. 264 should be in parity with section 263. The assessee should not be deprived of lesser time.

25. Section 269SS / 269T : Acceptance and repayment of deposit

As per present provisions, if loan or deposit exceeding Rs.20000/- is accepted or repaid by cash, penalty is leviable for breach of these provisions. As per proviso to section 269SS, if the transaction is between persons having agricultural income and if they have no other income chargeable to tax, this provision is not applicable.

Firstly, this provision should be made applicable in cases of searches and surveys as per the intention of the legislature. Secondly if the transaction is genuine identity of both the persons is established and the intention is not to evade tax, in those cases, this provision should not be applicable.

26. Section 271 (1) (C) : Penalty for concealment of income

- A.** Each addition in the assessment order is subject to penalty notice u/s. 271 (1) (C). Even if there is lump sum addition, agreed addition, G.P. addition, house hold exps. addition or any presumptive addition. The law should be specific that no penalty notice should be issued in such cases to reduce appellate work.
- B.** No penalty notice should be issued u/s. 271 (1) (C) for addition on account of deeming provisions like section 50C, 68, 69, 69A, 69B, 69C etc.

27. Limits under various sections should be enhanced :

A.	Section	Present Limit	Proposed Limit
i.	40A (3)	20000	50000
B.	Section	Present Limit	Proposed Limit
i.	194A	5000	25000
ii.	194C	30000	150000
iii.	194D	20000	100000
iv.	194H	5000	25000
v.	194I	180000	500000
vi.	194J	30000	100000
C.	Section	Present Limit	Proposed Limit
i.	269SS / 269T	20000	100000

These limits should be linked with cost of Indexation as applicable in case of long term capital gains.

Other Suggestions

1. Companies should be allowed to set-off entire past book losses including unabsorbed depreciation before they are subjected to MAT.
2. The MAT/ AMT credit should be allowed to be carried forward and set-off without any time limit.

3. A specific clarification should be issued to provide that higher depreciation charged in the books of accounts which is mandatorily required for preparing the books of accounts in accordance with the generally accepted accounting principles, Companies Act 2013 etc. would not be required to be adjusted in computing the book profit for the purposes of Section 115JB of the Act. Considering this issue also arose for the past years, the clarification should be issued with retrospective effect.
4. Currently, sale of listed securities is free from levy of Capital Gains Tax. This has resulted in buoyancy of Capital Markets, promoted substantial FII inflows and ensured transparency. However, there is one lacuna here. If the seller of the listed shares is a company, there is no taxability of the gains but the book profits are subject to the levy of Minimum Alternate Tax (MAT). The levy of MAT at 20 per cent plus defeats the very exemption from levy of capital gains tax. It is therefore suggested that profits which are exempt from levy of capital gains tax be also not taken as part of book profits for the purposes of MAT.
5. The threshold limit from exemption of AMT should be increased from Rs. 20 lakhs to Rs. 50 lakhs.
6. All dividends on which DDT has been paid, be allowed to be reduced from dividends irrespective of the percentage of equity holding keeping in mind that investment companies which do not necessarily own/have subsidiaries as they invest in various companies in the open market, be also made eligible for such benefit.

- 7.** The proviso to Section 115-O(1A) of the Act provides that the same amount of dividend shall not be taken into account for reduction more than once. The levy of Dividend Distribution Tax (DDT) at multiple levels has been a subject matter of grievance by corporate. A part of this issue has been resolved by providing in the Act that if a holding company receives dividend from its subsidiary, a further distribution of dividend by the parent will not attract levy of DDT. As it happens, promoter holdings in operating companies are not necessarily in a single parent.
- 8.** Also, irrespective of whether there exists a parent-subsidiary relationship, a tax on dividends which have already suffered levy of DDT amounts to multiple taxation and needs to be avoided. It is therefore suggested that dividends which have suffered DDT be treated as pass through and be not subjected to levy of DDT.
- 9.** The tax rate of DDT is recommended to be reduced to 10% from the current effective rate of ~ 20% (after including the education cess, surcharge and grossing-up of the dividend).
- 10.** To incentivize the investment in infrastructure sector, it is recommended that DDT on industrial undertakings or enterprises engaged in infrastructure development, eligible for deduction under Section 80-IA of the Act, should be abolished. It is also recommended that further exemption from DDT be granted to the 'infrastructure capital company/fund' with the condition that it invests the dividend received from its subsidiary in the infrastructure projects.

Proposals for widening tax base

1. After every social / religious / political function, details of exps. incurred and source thereof should be furnished in prescribed form and in prescribed limit.
2. It is in the knowledge of we all that even persons doing small business like panwala, chaiwala, farsanwala are earning income exceeding minimum exemption limit. They all should be brought in tax net on the basis of their exps. / investment etc. even on presumptive basis.

Even the works engaged in Diamond / Gold / Silver business have also taxable income. They should be brought in tax net. All payments to them should be made by account payee cheque / account payee bank draft.

3. Persons doing illegal business are also not assessed to tax having huge immovable and movable assets. They should be brought in tax net and special department should be assigned this work.
4. Income tax searches should be conducted even in cases of employees of Local Authority, State Government, Central Government as some of these are having huge unaccounted assets.
5. In order to prevent evasion of taxes, Tax @1% of ex-showroom price should be allowed to be collected by the seller of high value cars, say, cars having value above Rs. 10 Lakhs, from the ultimate consumer. The consumer may however, be allowed to take credit of tax so collected in his return of income after furnishing details of source of income in the relevant ITR form. The procedure followed in respect of section 206(ID) i.e. TCS on jewellery and bullion may be adopted.

- 6.** A single ITR form instead of ITR 1,2,3,4,5,6,7 should be prepared. The common fields in all ITR can be clubbed and Income under the various heads of income is restricted in form of Annexures. The assessee should click and fill only the annexure which is relevant for him. This would amount to simplification in true sense.

Wealth Tax

- A.** Limit of Wealth tax should be increased to Rs.2 crores.
- B.** If the assessee is the owner of more than one residential house, the exemption should be given to maximum two houses as per the choice of the assessee.
- C.** Granting of interest to the assessee on excess payment of tax should be in consonance with Income Tax Act (As proposed in serial no.15).
- D.** Time limit for rectification of mistake u/s 254 should be in consonance with Income Tax Act (As proposed in serial no. 17).
- E.** Time limit of revision of order on application by assessee should be in consonance with Income Tax Act (As proposed in serial no.18).
- F.** Wealth tax returns are not filed by many assesses though having taxable wealth. Special efforts should be made for increasing wealth tax assesses.

OTHERS

Imported second hand cars / two wheeler vehicles can be brought in India by paying minimum duty.

Hope that the above proposals are considered by your honor by which there will not be any lost of revenue to the Government but which will certainly reduce the hardship of the assesses.

Mukesh M Patel
Chariman
Representation Co.

Samir Jani
President

Dhruven Shah
Hon. Secretary