ALL GUJARAT FEDERATION OF TAX CONSULTANTS

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June 6, 2014.

Hon'ble Shri Arun Jaitley,
Union Minister for Finance,
Government of India.

Honorable Sir,

RE: PRE-BUDGET MEMORANDUM MAKING IMPORTANT SUGGESTIONS.

Please accept our heartiest congratulations to you upon your swearing in as Union Minister for Finance and also for land-slide victory achieved by Bhartiya Janata Party in the recently held Parliamentary Election under the leadership of Hon'ble Prime Minister Shri Narendra Mody.

Right since India's Independence, this is one of the finest Governments we have and as a result people all over India have very high expectations. More over people also have full trust that these expectations will be fulfilled looking to Hon'ble Prime Minister's and his team's past record.

Under your dynamic leadership the working of Income Tax Department will be more and more people friendly and problems of tax-payers will be resolved effectively and efficiently.

Our All Gujarat Federation of Tax Consultants is an apex body of 28 Tax Consultant Associations of Gujarat and also more than 1000 individual members consisted of Tax Consultants and Chartered Accountants of Gujarat.

Sir, we humbly submit herewith our **Pre-Budget Memorandum** for the ensuing Union Budget and request your honour to kindly look into and consider suggestions made therein. These are made with a view to avoiding litigation and hardship to the tax payers without harming the revenue.

There are some old provisions fixing basic limits of TDS etc which need to be increased considering increase in costs and inflations during last more than 2 decades.

Sir, if you offer us an opportunity for audience, we would like to come personally and make a presentation.

With warm regards,

Sincerely yours,

(CA Sunil Talati)
President

(Dhiresh T Shah)
Chairman, Representation Committee.

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PRE-BUDGET MEMORANDUM ON DIRECT TAXES

1. Section 14-A :

Expenditure incurred in relation to income not includible in total income.

As per this section, any expenditure incurred by the assessee in relation to income which is disallowable. The rule framed to disallow this expense sometimes gives absurd figure of disallowance.

Suggestion :

It is suggested that basic limit should be fixed for disallowance of expenses. No disallowance should be made if the amount disallowable is less than Rs.1 Lac. In any case, the disallowance should not exceed 20% of exempted income. Rule 8-D needs suitable amendment. In no case, the disallowance should exceed the amount of income not forming part of total income.

2. Section 40A(3) :

As per this section, if the assessee incurs any expenditure exceeding Rs.20000/- otherwise than by an account payee cheque or account payee bank draft, the expenditure will not be allowed as business expenditure though the expenditure is genuine and identity of both the parties could be proved beyond doubt. This limit was introduced way back in the year 1987.

Suggestion :

1. The limit of Rs.20000/- should be enhanced. It should be fixed at Rs.50000/-.

2. Some time due to urgent business need, the expenditure is required to be incurred by cash. In such cases, exceptional circumstances should be provided as per old Rule 6DD.

3. Rule 6DD(J) was in existence which was cancelled afterwards. As per this rule exceptions were provided, where the payment though exceeding Rs.20000/- was made by cash was not hit as per this rule. This section hits genuine business transactions. If the identity of the payee is established and the payment is made in the course of business, no disallowance should be made.

4. Old Rule 6DD(J) must be reintroduced.

3. Section 50 :

Assessment under the head capital gains in case of sale of depreciable asset.

Any asset on which depreciation is claimed is sold out of block of assets, the same is assessable as short term capital gains. Thus the asset which is sold is a business asset but the profit or loss on its sale is assessed as short term capital gains. This invites litigation. Business loss is not allowed to be set off against surplus on sale of depreciable asset. Before amendment profit or loss on sale of depreciable asset was considered to be business income or loss.

Suggestion :

Profit or loss arising on account of sale of depreciable asset should be taxed under the head income from business or profession.

4. Section 54EC :

Restriction of investment in long term specified asset.

As per proviso to section 54EC(I), the assessee is entitled to invest maximum Rs.50 Lakhs in specified assets during any financial year. This restriction has been brought on the statute book with effect from 1st April, 2007. Previously there was no limit for investment in specified asset. This investment is used for the purpose of National Highways, Rural Electrification etc.

Suggestion :

Limit of Rs.50 Lakhs should be removed.

5. Section 56(1)(vi) :

Request to raise limit of Rs.50000/- to Rs.2 Lakhs.

As per this section where any sum of money is received without consideration and aggregate value of which exceeds Rs.50000/-, whole of the aggregate of value of such sum is taxable as income under the head, "Income from other sources". Genuine gifts and even gift to HUF is hit by this provision. This section was introduce in the year 2009. Now due to inflation also this limit is required to increase,

Suggestion :

Limit of Rs.50000/- may be increased to Rs.2 Lakhs.

6. <u>Section 111A :</u>

<u>Taxing of short term capital gains at concessional rate.</u>

As per this section short term capital gain on sale of shares in company or units or equity oriented fund is taxed at 15% with effect from 01/04/09. Previously it was taxed at 10%.

Suggestion :

This short term capital gains should be taxed at 10%.

7. <u>Interest on Housing Loan - Increase of limit to Rs. 5 Lacs under Section 24 of Income Tax Act:</u>

Suggestion :

It is suggested that the deduction of interest on housing loan may be increased from Rs.1.5 Lacs to Rs. 5 Lacs

8. <u>Section 147 : Income escaping assessment</u>

As per the provisions of this section, the case can be reopened within four or six years as the case may be. Previously there was provision to reopen up to 16 years. This limit was reduced to 10 years and afterwards 4 to 6 years as per present provisions.

Suggestion :

The case can be reopened within 2 years if the escapement is less than Rs.1 Lakh and in any other case not more than 4 years.

9. **<u>Section 153A : Assessment in case of search or requisition</u>**

As per the amended provisions, introduced with effect from 01/06/03, the returns for the provisions 6 years are required to be filed in case of search or requisition and the tax is payable for each year separately. Interest is also payable and penalty is also leviable for each year if liable. Previously as per chapter XIVB sections 158B to section 158BI, the tax was payable at 60% and there was no liability of interest or penalty. Due to introduction of section 153A, the litigation is increased and it takes years to settle the dispute. This dispute is settled at the stage of ITAT only.

Suggestion :

It is suggested that old provision of taxing the block @ 50% if undisclosed income does not exceed Rs.10 Lakhs and in any other case @ 60% subject to no penal interest is charged, or penalty is initiated, or prosecution is launched.

10. **<u>Increase in limit of TDS in section 193 to 194LA</u> :**

As per the various provisions of chapter XVII, the tax is required to deducted if the amount is credited or paid exceeds certain limits.

Suggestion :

The following limits for TDS which was fixed before more than twenty years needs substantial increase as under :

	Section	Particulars	Present Limit	Proposed Limit
i.	194A	Interest	5000	25000
ii.	194C	Contract	30000	50000
iii.	194D	Insurance Commission	20000	100000
iv.	194H	Commission / Dalali	5000	25000
v.	194I	Rent	180000	250000
vi.	194J	Professional services	30000	50000

11. Base Year for cost of acquisition of capital assets:

Section 55 (2)(b) of the Income Tax Act, 1961 provides the option to the assessee to consider the fair market value of capital assets as on the 1st day of April , 1981 as the cost of acquisition where the same were acquired before April 1, 1981. This base year has been in use since the last amendment made under the Finance Act, 1992. In light of the significant changes in the economy since then, it is that the base year for indexation purposes should be of a later date.

Suggestion :

It is suggested that the base year to be considered should be 10 years prior to the date of transfer or April 1, 2001 whichever is later. This be substituted as the base year instead of April 1, 1981 in section 55(1)(b) and 55(2)(b).

12. Section 254 : Order of appellate tribunal

As per section 254(2) proviso, where the stay is granted to the assessee and the appeal could not be decided though there is full co-operation from the assessee, still as per amended proviso with effect from 01/10/08 the stay stands vacated. This amendment is very harsh. If the assessee has given his utmost co-operation and still the matter is not decided by ITAT thus for this reason the assessee is held responsible and the stay is vacated.

Suggestion :

Grant of stay should not be linked with disposal of matter by ITAT. The stay should continue till the matter is decided by ITAT.

13. Section 269SS / 269T :

Mode of taking or accepting loans or deposits or repayment of loans or deposits, of Rs.20000/- or more in cash.

Chapter XXB was brought on the statute book to with effect from 1984 counteract evasion of tax in certain cases. As per this provision no person can take loan or deposit in cash of Rs.20000/- or more, or make repayment of the same in cash. The cases were relating to search etc. This provision hits hard to even genuine business loans accepted or repaid. It is the general trend of courts that, if the transaction is genuine and identity of the payer is proved, no addition should be made on this account.

	Section	Particulars	Present Limit	Proposed Limit
i.	269SS/269T	Loan Deposit in cash and repayment of the same.	20000	50000

Suggestion :

1. The provision should be made applicable in cases of searches as per the intention of legislature.
2. The limit of Rs.20000/- fixed in the year 1984 may be increase to Rs.50000/- due to inflation.

14. GAAR and Accountability :

A. General anti avoidance provisions where incorporated under the Income Tax Act in Chapter X-A from section 95 to Section 102 and are effective from 1st April, 2016.

B. Substantial powers have been given to the tax officers to treat a particular transaction as tax avoidance and thereby dis regard the transaction or to re characterize the transaction.

C. You are aware that under the existing system of taxation there is no accountability of the tax officers. There are number of instances where high pitched assessments are made and the honest tax payers are put to inconvenience for no fault of them. In such cases no officers are made responsible for such wrong assessments.

Suggestion

Therefore, the GAAR provisions may be made effective only when there is a accountability of a tax officers so that the honest tax payers are not harassed

15. Minimum Alternate Tax (MAT)

A. MAT on Infrastructure Companies:

It may be highlighted that infrastructure companies are eligible for deduction under Section 80 IA of the Income Tax Act. The deduction is an amount equal to profit earned on its business activities. Levy of MAT on the infrastructure company is against the basic intention of legislation as by levying MAT, those companies are taxed who have profits and are distributing dividend without payment of any tax.

Suggestion

It is suggested that the rate of tax under MAT may be restricted to 15% or MAT may be levied on the book profits after reducing the amount of profits redeployed for new Investments / new business or transfer to specified reserves. This would help the industry to redeploy the profits and contribute to the growth of the economy.

This will enable the Infrastructure Capital Company as well as Infrastructure Capital Fund to mobilize resources in financing the Infrastructure projects. The growth of Indian economy is largely depends upon the development of adequate Infrastructure facilities in the Country. This will be possible only when Fiscal benefits to the Private Sector who undertakes these projects and those who mobilize resources for the project are given and continued for long-term.

B. MAT on Special Economic Zone (SEZ):

The imposition of MAT on Special Economic Zones (SEZ) has completely jeopardized the basic concept and intention of establishing an SEZ unit. Imposition of MAT will make SEZ units unattractive as incentives available outside will outweigh the tax benefits offered by an SEZ. SEZ units have been enjoying the advantage of zero-tax liability for five straight years and once the tax-free status goes, the equations will change completely. For instance, if a unit is outside an SEZ and earns 10% profit, then it would earn Rs. 10 on a turnover of Rs. 100 and it would have to pay a tax of 33.5% on profit, which would amount to Rs. 3.5. But it would also get a minimum 3% incentive that would amount to Rs. 3. The same unit in an SEZ will have to pay Rs 1.85 as tax under the new MAT dispensation and will not gain any export incentive. Although exporters can take credit for minimum alternate tax, SEZ units exporting 100% of their services /production cannot adjust it in the first five years of operation as they would have no tax liability to set it off against.

Suggestion

It is suggested that the imposition of MAT on SEZ Units may be withdrawn to give benefits to SEZ Units as envisaged under the SEZ Act.

16. <u>MAT credit to include Surcharge and Education Cess:</u>

Recently, the Delhi Income Tax Appellate Tribunal in the case of Richa Global Exports Private Limited vs. ACIT (CPC) Bangalore [2012] 25 taxmann.com 1 (Delhi-Tribunal) have held that the MAT credit under section 115JAA of the Act shall not include the amount of surcharge and education cess. Court has gone on to hold that MAT payable under section 115JB of the Act is only income-tax and does not include surcharge and education cess and thus, surcharge and cess is not eligible for credit under section 115JAA of the Act.

If this interpretation is resorted to, the surcharge and cess paid by the taxpayers in the previous year in which tax under MAT was paid would be a dead loss for which credit would not be allowable. This could not be the intention of the legislature as the surcharge and education cess are payable in the year in which the MAT credit would be adjusted.

Suggestion

It is suggested that suitable amendments be provided under section 115JAA of the Act to provide that the amount of surcharge and education cess paid on MAT would be eligible for credit in subsequent years.

17. <u>Section 2 (15) - Charitable Purpose</u>:

As per the first proviso to section 2(15) “charitable purpose” excludes any activity in the nature of any trade, business or commerce or any activity of rendering any service in relation to any trade/business/commerce for a fee, irrespective of the nature or use or application of such activity. While the intention of the legislature is not to hit the genuine trusts carrying on charitable activities, the provisions may be construed differently by the tax authorities.

The section further provides that the above proviso will not apply if the aggregate value of the receipts from the activities in the nature of trade, commerce or business or in relation to trade, commerce or business is Rs. 25 Lacs or less in the previous year.

Suggestion

- It is suggested that if such activity is incidental to the main objects then it should continue to be treated as a charitable purpose. For instance, a charitable trust involved in charitable/philanthropic activities in rural areas such as organizing self-help groups, cattle grazing etc. can organize a small function and the amounts collected by way of advertisements or entry fees should not result in such trust being treated as being involved in business. Similarly trade associations or association formed by group of industry for common objective like environment should be treated as carrying on charitable activity. Accordingly, it is recommended that an explanatory clause be added stating that the ancillary and incidental activities for achieving the main objects of the trust, if it is of a secondary /minor nature, should not constitute any trade, business or commerce.

- Also, it is suggested that the first proviso itself should be deleted, as it is causing substantial hardship to a large number of genuine trusts. Deletion of this provision is also likely to reduce substantial litigation.

- The limit of Rs. 25 Lacs is too meager, and may be enhanced to Rs. 5 crore so that small and medium sized trusts do not lose the benefit of the exemption.

18. <u>Deemed Dividend u/s. 2(22)(e):</u>

The provisions were introduced when the Law provided taxation of undistributed profit. The provision relating to taxation of undistributed profit is omitted since long and therefore, there is no question of continuing this provision.

Under the section if any loan or advance is granted by closely held company to any shareholder having more than 10% interest in the company or to any concerned where such shareholder has a substantial interest then it is treated as Deemed Dividend.

Hence, even if a loan is a repaid in few days, the granting of a loan attracts the tax in the hands of the recipient.

Suggestion

It is submitted this provision is harsh and outlived its utility and hence same may please be deleted.

Alternatively, the section should be amended to provide that if the loan is repaid within one year from the date of granting, same should not attract the rigors of section 2(22)(e).

19. <u>Section 47- Conversion of a Company into Limited Liability Partnership ("LLP"):</u>

- Clause (xiiib) to section 47 of the Act provides for an exemption on levy of capital gains tax in the event of transfer of a capital assets or shares held by/in the private limited company or unlisted public company on conversion of such company to LLP on fulfillment of various conditions. One of the conditions stipulated under the law is that the total sales, turnover or gross receipts in the business of the company in any of the three years preceding the year in which conversion takes place should not exceed sixty Lacs rupees. The said limit is low as most of the eligible companies would be having a turnover exceeding sixty Lacs rupees. Thus, the said condition is rendering the impugned exemption inoperative and redundant.

- This will be more relevant now as Companies Act, 2013 is effective and there are substantial restrictions on Private Limited companies. The deletion of condition of turnover will encourage corporates to convert into LLP in more efficient manner.

Suggestion

It is suggested that the condition in terms of the sales, turnover or gross receipts should either be done away with or the limit of sixty Lacs rupees should be substantially enhanced or the condition of the turnover should be deleted.

- Extending exemption from Capital Gains Tax for conversion to LLP by Partnership and Sole Proprietary Firms Presently clause (xiiib) to section 47 of the Act provides for an exemption on levy of capital gains tax in the event of transfer of a capital assets or shares held by/in the private limited company or unlisted public company on conversion of such company to LLP on fulfillment of various conditions. However, such an exemption is not provided to Sole Proprietary and Partnership Firms intending to convert itself into LLP to achieve an organized and regulated entity structure whereby retaining the flexibility and minimizing the formalities.

Suggestion

It is suggested that the benefit of exemption in respect to conversion to LLP may also be extended to Sole Proprietary and Partnership Firms intending to convert itself into LLP.

20. <u>Section 80 IA - Tax Holiday</u>

<u>For Power Sector:</u>

Under Section 80 IA of the Income Tax Act, deduction in respect of profits and gains from power undertakings (including for captive power generation plants) is available for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking generates power. This benefit is available provided the power undertaking begins to generate power at any time before 31st March, 2012.

Most manufacturing organizations, especially those in power intensive industries, have been forced to invest substantial capital to meet their energy requirement, as the same is not available adequately from the grid. Since there is immediate need to augment electricity generation capacity in the country and Industry has to invest large capital in setting up of power plants to ensure uninterrupted power supply, there is a need to extend tax holiday under section 80IA for power plants.

Suggestion

It is, therefore, suggested that this sunset clause may be extended for another period of five years, so that companies can continue to invest capital in power generation with a long term purpose.

<u>For Hydrocarbon Sector:</u>

Government has granted 100 per cent tax holiday in respect of profits derived by undertakings engaged in the generation or generation and distribution of power for a period of any 10 consecutive years out of 15 years beginning with the year in which the undertaking starts generation or distribution of power.

As per Reserve Bank of India Circular No. 20 dated 8th October, 2008, the definition of infrastructure sector for the purpose of external commercial borrowing will now include mining, exploration and refining activities. Hydrocarbon sector is quite critical for the speedy and balanced growth of any economy, especially ours in the context of the over-dependence on oil imports to meet our domestic demand which has significantly increased over the recent years in view of the robust growth.

Suggestion

It is suggested, that hydrocarbon sector may be made at par with the power sector in the matter of fiscal incentives, for, undertakings engaged in commercial productions or refining of mineral oil are equally capital intensive as power plants.

Further, the definition of infrastructure sector in the explanation to Section 80-IA of the Income Tax Act should be amended to include exploration and refining activities. Accordingly, exploration and refining undertaking may be allowed deduction for 10 consecutive assessment years out of 15 years period.

On principles of equity, undertakings which have already started commercial production or refining of mineral oil should also be given the option of claiming the 10-year tax holiday beginning with the year in which they start earning taxable profits so that they are in a position to enjoy the incentive for the intended period of 10 years

21. <u>Section 115 BBD – Tax on certain Dividends :</u>

This section was introduced by Finance Act, 2012 providing concessional rate of tax @ 15% for receipt of dividend from foreign subsidiary companies. The applicability of the section has expired on 31st March, 2014.

Suggestion

With a view to give incentive to the Indian companies to bring dividend from the foreign companies, it is suggested that the section should be further extended for further 5 years.

22. <u>Transfer Pricing Regulations - Specified Domestic Transactions:</u>

As per Section 92BA the coverage of transfer pricing has been expanded to include certain ‘Specified Domestic Transaction’.

The coverage of the transfer pricing was expanded taking into account the views of the Honorable Supreme Court judgment in the case of Glaxo SmithKline Asia (P) Ltd. wherein it was held that tax laws need to be amended in order for domestic transactions between related parties to be brought within the ambit of the Indian TP provisions.

This also covers a scenario wherein the payment of remuneration by the company to its director or relative of such directors is also required to be at arm’s length. The same would put an onerous responsibility on the company vis-à-vis justification of the arm’s length nature of such payments.

There could be a situation where by the said adjustment due to non-arm’s length nature can lead to double taxation. For example a payment by a taxable entity to another taxable related entity and in case it is determined that such payment are not at arm’s length the same can lead to tax being paid by the entity making the payment and further the another entity would also pay tax on the transaction value rather than the arm's length value, as the transfer pricing regulations as they stand today specifically negate the corresponding adjustment.

This seeks to cover a situation wherein there could not be any loss to the exchequer. The same is not in line with the suggestion provided by the Supreme Court in case of Glaxo Smithkline. The Supreme Court had provided the situation wherein transfer pricing should be applicable in case of transactions between a profit making and a loss unit / company. The other scenario which was envisaged by the Supreme Court was transactions between units / assesses having different tax rates. Other than the scenarios contemplated above, a corresponding adjustment should be allowed and hence provided for on the statue.

Further, Domestic Transfer Pricing provisions are more relevant and prevalent in countries like USA and Canada, where both federal and state income-taxes separately exist. In India since income-tax is a central tax, DTP provisions have no relevance as any adjustment due to domestic transfer pricing provisions should, logically have offsetting effect and should have no material revenue impact as both the assessee would be resident in India. Further, the documentation requirements in case of transfer pricing are quite onerous, and will result in substantial compliance costs for domestic taxpayers.

Suggestion

It is, therefore, suggested that the domestic transfer pricing provisions may be dropped. Alternatively, the following points may be considered:

No applicability in case of same rate of tax

The rational of introducing the provision was to follow the observations of the Supreme Court referred above. On the facts before the Supreme Court, one entity was making losses and the other entity was making profits and there were allegations about shifting of profits from profit making entity to loss making entity.

If both the entities are paying tax at the same rate, there is no objective of shifting the profit from one entity to another and consequently there is no revenue loss. Therefore, the domestic transfer pricing provision should not be make applicable to such tax payers so as not to burden them with tremendous paper work, for which no objective is being served.

Similarly, domestic transfer pricing provision should not be made applicable to a co-operative sector where the objectives are not commercial.

Harmonization of the"related party definitions"

Presently, three different sections referred to in section 92BA and section 92A of the Act have different thresholds for determination of the 'related party' definitions which are as under:

1. Substantial Interest - Not less than 20% of voting power -Explanation (b) to Section 40A(2).

2. Associated Enterprises - Not less than 26% of voting power - Section 92A(2)(a) & (b).

3. Associated Person - Not less than 26% of voting power - Section 80A read with section 35 AD(8).

There is a need for harmonization of the different thresholds for the related party definitions in the aforesaid sections. It is, therefore, suggested that suitable amendments may be carried out and a uniform definition may be provided under the Act.

Benchmarking of Directors Remuneration

Presently, there is no guidance in respect of benchmarking of the Directors'remuneration. Since payment of directors' remuneration is subject to DTP provisions, necessary guidance for benchmarking in respect of the same may be provided.

Arm's Length Price vs. Ordinary Profits

Section 80IA(8) deals with 'ordinary profits' whereas transfer pricing compliance refers to the 'Arm's Length Price' of the transactions. Conceptually, 'price principles' cannot apply for benchmarking of 'profits'. It is, therefore, suggested that suitable clarification may be provided.

Correlative Adjustments

Presently, in the Domestic Transfer Pricing (DTP) provisions there is no provision relating to correlative adjustment. It is very important that in case of any covered under the domestic Transfer Pricing Provisions, if any adjustment [upward or downward] is made, then correlative adjustment in the hands of the other party should be invariably be made.

It is suggested that necessary amendment may be made in the DTP provisions to provide for the correlative adjustments.

Increase in the threshold limit of Rs. 5 crore

The threshold limit of 5 crore is too low for applicability of the Domestic Transfer Pricing Provisions. It is suggested that in order to ensure that only substantial transactions are covered under the DTP provisions, the threshold limit should be should be linked to the turnover i.e. if the transaction value exceeds 10% or more of the turnover than only it should apply.

Provisions of Advance Pricing Agreement [APA] should be made applicable to Domestic Transfer Pricing (DTP)

The proposed APA provisions are being made applicable to only international transactions. It is suggested that the same should also be made applicable to domestic transactions covered by DTP provisions.

Exclusion of Expenditure of a Capital Nature

The term “specified domestic transaction” has been defined to mean any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A. Such expenditure would possibly include capital expenditure made to such a related person, even though section 40A(2)(b) does not apply to capital expenditure.

It is therefore suggested that it should apply to expenditure referred to in section 40A(2)(a), and not to payments made to persons specified in section 40A(2)(b).

23. <u>Corporate Social Responsibility Costs:</u>

Corporate sector is currently involved in various areas of social responsibility/community development as part of nation building. Further, the new Companies Act, 2013 has introduced provisions regarding expenditure on CSR. Accordingly, suitable tax incentives should be introduced in respect of such CSR costs to accelerate the process and to ensure that the country can reach the goal of being a developed nation in the near future.

Suggestion

It is suggested that a deduction of 100% may be provided to the corporate incurring expenditure on community / social development (both capital and revenue) specifically covering critical areas like education, vocational skills development, health, environmental sustainability, social business projects, animal husbandry, water management, women's empowerment, poverty alleviation and rural development. Further, even in cases where a company has its own trust or foundation it should also be eligible for the deduction in respect of expenditure incurred for CSR activities.

24. <u>Suggestions related to Tax Deducted at Source (TDS):</u>

- **PAN for foreign parties i.e. non-residents**

India has entered into number of DTAA under the Viena Convention and the domestic law u/s. 206AA should not override such agreements with other countries. Therefore, it should be provided that wherever the rate of tax under the DTAA is lower than 20% u/s. 206AA, same should be applicable irrespective of the non resident having PAN in India. In other words section 206AA should not override the DTAA entered in to by India.

25. <u>Wealth Tax:</u>

The exemption limit for Wealth Tax of Rs. 30 lacs should be increased to Rs. 1 Crore in view of general increase in the value of Jewellery and Real Estate value

26. <u>Amendment in section 115A -Tax Rate of 25%:</u>

Tax on Royalty and FTS

- Considering the broad coverage under FTS and Royalty definitions in Indian law – in particular, the definition of FTS, it is recommended that the existing tax rate of 10% be further reduced (say to 5% as in case of Sri Lanka for management services) or at least be retained at the present levels. Enhancing the current rate to the proposed 25% would adversely impact wide range of cross border transactions transacting with India as already pointed out above. Further a lower rate would also align with the approach which India has adopted so far, will match with India treaties and will also match with rate of taxes applicable in other jurisdictions. In case of growing industries where the technology agreement are net of tax, the Indian entrepreneur will have to bear more cost.

- The prohibitory rate of 25% may be restricted in its application only to transactions with persons located in notified jurisdiction area [as per Section 94A of the Act] similar to the treatment considered by some countries like Brazil.
- Additionally, an option should be provided to a Non Resident taxpayer to enable it to offer to tax its income on a net basis of taxation (i.e. income less expenses being permitted to be taxed at the normal corporate tax rate , example 40 percent plus surcharge and cess in case of foreign companies).
- Concurrently, the definition of "FTS" may be modified and may be brought in line with predominant International practice.

27. <u>Section 234E – Fee for Defaults in furnishing statements</u>

This section was introduced by Finance Act, 2012 for levy of fees @ Rs. 200 for each day of delay in filling of TDS/TCS returns. Earlier there was a penalty provisions for such failure.

There is no mechanism of any defense or any chance to prove reasonableness for furnishing the return late. Even for genuine reasons or even due to fault of the banks, if the returns are delayed there is an automatic levy of fees. Many courts like Mumbai, Calcutta, Karnataka have granted stay against such levy.

Suggestion:

It is therefore suggested that this provision should be deleted

28. <u>Section 271 AA- Penalty for failure to keep and maintain information and document etc. in respect of certain transactions:</u>

Section 271AA imposes a penalty equal to 2% of the value of each international transaction for failure to maintain documents required for international transaction.

It may be highlighted that while the quantum of addition itself is disputable in transfer pricing assessments, fixing the penalty on the assessed income would increase the burden of the taxpayer considerably.

Due to retrospective extension of scope of international transaction, the Transfer Pricing Officer (TPO) can ask the taxpayer to pay penalty under the said section 271AA at the rate of

2% of value of international transaction due to failure to keep information in addition to another 2% under section 271G for not furnishing the information besides regular penalty under section 271C. This would result in multiple tax demand on arbitrary values.

Suggestion

It is, therefore, suggested that penalty should be restricted to tax in dispute and not linked to the value of transaction.

29. <u>Time limit for granting of refunds and interest on appeal effects</u>:

It is experienced that when any order of appellate authorities is received, the assessing officer delays in issuing the order giving effects to such appellate orders. Due to this delay, the refund arising from such appellate order also gets delayed. This result in, assessee being deprived of interest on the delayed refunds.

Suggestion

It is, therefore, suggested that a suitable time limit may be stipulated for for giving appeal effect and granting refunds.

30. <u>Allowability of Interest paid under Income-Tax Act, 1961</u>:

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.

Suggestion:

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 on refund should be exempt from tax.
Similarly, the interest granted u/s. 244A is taxed at taxed in the year of receipt. However, subsequently at the time of assessment or otherwise if it is withdrawn, the same is not allowed as a deduction. This discriminatory in nature.

31. <u>Maintenance of Documents / Records in electronic form:</u>

With the increase in transactions in business with volume, the tax payers are required to maintain substantial physical documents like Books of Accounts, Copy of Purchase & Sales Invoices, Bank Statements, Vouchers for expenses, Returns filed under various statuses, Tax Challans under various statuses etc. The large corporate are actually required to hire space like godown to maintain this records in safe. These records are required to be maintain at least for 6 years under Income Tax Act and for 8 years under Companies Act.

- Section 2(12A) defining books or books of accounts should clearly state that the books maintained in digital form would also be considered as books of accounts for the purposes of the Act
- The assesses may scan the original documents and subsequently be permitted to destroy the same as they would available only in digitized form.
- The permission to maintain the books in electronic form should be given to companies beyond a certain prescribed size & scale of operations. Consequential amendments may be made and rules prescribed, as deemed necessary to provide guidance and check points to prevent misuse.
- Here, it may be noted that Section 6 to Section 8 of the Information Technology Act 2000 permits use of electronic records and use of electronic signature while dealing with Government or its agencies. Thus, Government itself accepts the electronic mode while dealing with it. However, the Section 9 of the said Act does not enforce the electronic form and hence in the absence of a suitable amendment to the Act, it may not be possible to use the electronic records as envisaged by the Information Technology Act, 2000.

Suggestion

We would therefore suggest to amend the Income Tax Act to allow maintenance and storage of physical documents in electronic format and to issue necessary guidelines for the same.

32. <u>Standard Deduction in case of Salaried person:</u>

The Income Tax Act provided Standard Deduction from the salary income from many years. Same was withdrawn before 10 years.

Many salaried persons are required to spend certain amount during the course of their employment which could not be recovered from the employer. Therefore, the equity demands that some standard deduction should be granted to the salaried persons.

Suggestions:
It is therefore suggested that Standard Deduction should be reintroduced for salaried persons.

33. Enhancement of various tax saving thresholds:

Various tax saving thresholds provided under the Act are not in sync with the rising cost of living.

Suggestion
It is therefore, suggested that Government must enhance the tax saving threshold so as to make it meaningful and in sync with the present economic conditions such as:

- Exemption limit for Children Education allowance may be raised from Rs.100 per month to at least Rs.1,000 per month keeping in view the rising cost of education.

- Exemption limit for transport allowance to meet expenditures of commuting from residence to the place of work may be raised from Rs.800 to at least Rs.5,000 per month considering increase in fuel cost in recent past.

- Raising the limit under section 80C of the Act to at least Rs.200,000 would provide an impetus to the insurance and other investments leading to more capital formation in the economy.

- Deduction limit for health insurance premium u/s. 80D should be increased to Rs. 50000 from Rs. 150000.

- Deduction limit for medical expenditure of dependent person u/s. 80DD should be increased from Rs. 50000 to Rs. 1,50,000.

- Deduction limit for medical treatment u/s. 80DDB should be increased from Rs. 40000 to Rs. 100000.

34. Interest on Housing Loan - Increase of limit to Rs. 5 Lacs under Section 24 of Income Tax Act:

Section 24 of the Income Tax Act provides for deduction of interest on housing loans up to Rs.1.5 Lacs for self occupied property on borrowings done after April 1999 and acquisition / construction completed within 3 years.

In view of the high level of inflation and rising property prices and interest rates, there is an urgent need to revise the limit upwards.

Suggestion

It is, therefore, suggested that the deduction of interest on housing loan may be increased from Rs.1.5 Lacs to Rs. 5 Lacs

35. Leave Travel Concession / Assistance - Tax Relief Every Year and Replacement of Calendar Year by Financial Year:

As per the current provisions, Leave Travel Concession / Assistance is eligible for tax relief for 2 calendar years in a block of 4 calendar years.

Suggestion

It is suggested that the concept of calendar year should be replaced with financial year (April - March) in line with the other provisions of the Income Tax Law. Moreover, the concerned tax relief should be granted annually and be extended to both domestic and foreign travel, to give a fillip to the Travel and Tourism Industry

36. Taxing of Contribution to Superannuation Fund in excess of Rs.1 Lacs:

The Finance Act, 2009 had imposed tax on employees in respect of the company's contribution to Superannuation Fund in excess of Rs.1 lac. This provision was similar to that which was earlier applicable to Fringe Benefit Tax.

It may be noted that there are various types of superannuation funds. In case of the new pension scheme and similar superannuation funds, the contributions made by the employer vests with the employee and he can transfer it from one employer to another. However, in other cases, contributions made by the employer to a Superannuation Fund do not accrue to the benefit of the employee till such time he retires upon superannuation, when the Fund is used to purchase annuities and/or to pay the commuted pension to the retired employee. Such contributions may or may not result in superannuation benefits to the employees since there are various conditions to be fulfilled by the employees like serving a stipulated number of years, reaching a certain age etc.

Suggestion

In view of the pension payments it is suggested that contribution to superannuation fund may not be taxed as perquisite as per the ratio of decision laid down by the Hon'ble Supreme Court in CIT vs. L W Russel [2002-TIOL-686-SC-IT] being subjected to tax at the time of actual receipt by the employee.

As such, employees should not be made liable to pay tax on such contributions, the benefit for which may or may not arise and the benefit is subjected to tax at the time of actual receipt.

37. <u>Limit for Medical Reimbursements-Section 17</u>:

Medical expenses reimbursed by the employer are exempted to the extent of Rs.15,000/- per annum. This limit has remained unchanged from the financial year 1998-99 onwards.

Suggestion

Considering the sharp escalation in cost of medicines and medical treatment, it is suggested that this limit be increased to Rs.100,000/-.

38. Administrative suggestions :

A. For rectifying any mistake in case of processing of return by CPC should be carried out by the assessing officer having jurisdiction of the assessee.

B. Rectification u/s 154, appeal effect, issuance of refund after approval etc. should be done within maximum 30 days.

C. If the case is selected for scrutiny and there is no major addition / additions, the same case should not select for scrutiny for at least 3 years. The department has all the powers to reopen the case.

39. General suggestion :

It is the experience of our members who are in the filed of taxation since many years that, the law should be simple and compliance should be easy. The discretionary powers of the I.T. authorities should be limited. The assesses are willing to pay legitimate taxes without harassment. The approach of the I.T. department should be friendly and human. There should not be frequent amendments in law or procedure. Amendment in procedure should be brought to the notice of tax payers well in advance. There should not be retrospective amendments when the matter is decided against the department by the supreme court. By putting faith in the assesses and motivating them for voluntary compliance, there will be increase in the revenue of the Government.

Thanking you,

Sincerely Yours,

For All Gujarat Federation of Tax Consultants

(CA Sunil Talati)
President

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Chairman
Representation Committee