CALCUTTA CHAMBER OF COMMERCE

PRE-BUDGET MEMORANDUM

ON

UNION BUDGET

2022-2023

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Suggestions on Direct Taxes

Sl.	Section	Issue	Recommendation
1	2(22)(e) – Deemed Dividend	Provision of Section 2(22)(e) of the Act on deemed dividend is a plethora of litigation between assesse and department.	This provision should be abolished.
2	2(42A) – Short Term Capital Asset	Section 2(42A) was last amended for landor building, while many real estatetransactions take place on leaseholds,tenancies etc. To serve spirit ofamendment, all immovable propertiesmay be included to stimulate housingsector.	It is suggested to amend section2(42A) further so as to include allimmovable properties within itspurview.
3	10(32) -Income of minors- to increase exemption limits	At present income of minors included in the hands of parents is exempt to the extent ofRs.1,500/- for each minor. The averageexpenditure to meet cost of a minor's education/health/living expenses hasgone up considerably in recent years, limit ofRs.1,500/- fixed is woefully inadequate.	It is suggested that thisshould be raised to at leastRs. 5,000/- for each minorchild.
4	Exemption u/s 10(10D) if the premium exceeds Rs. 2.50 Lakh :	ULIP is an excellent insurance option with the taxpayers coupled with the investment options whereby taxpayers can get the higher returns by investing in it. There is already a ceiling of 15% of sum assured for investment in ULIP. The provision to restrict the amount to Rs. 2.50 Lakh is acting as a bar for investment in insurance cum investment options.	In view of the fact that the country doesn't have a social security system in place, the limit of Rs. 2.50 Lakh may kindly be enhanced to Rs.15 Lakh as it would meet the requirement of funds in the hands of the taxpayers at the time of maturity or retirement.
5	12(1) – Contributionreceived inkindwithout specificdirection to formpart of thecorpus under	Some charitable and religious trusts receivevoluntary contributions in the form of gold,silver, jewellery, land etc. The donation inkind received by some charitable	In order to bring contribution received in kind (such as gold, silver, jewellery etc.) without specific direction to form part of the corpus under tax net, it is suggested to amend

	taxnet	andreligious trusts is in big volume and carry highvalue. Many times, it is received from unknown donors. Some trusts are notmaintaining proper record of it. Hence, it isnecessary to bring it under tax net.	section 12 so as to insert the term "either received in cash or in kind".The value shall be the market value as on date of receipt of such donation. Alternatively, details of voluntary contribution received in kind should bemade mandatory to upload with ITR.
6	Section 12A(1)(ab) Information regarding modifications of the objects which do not confirm to the conditions of registration	The time limit of 30 days is too short. Many NGOs are run by volunteers. It is unfair to cast such an onerous responsibility on them. For example, where the amendment to the trust deed is sanctioned by a Court etc., it may take time to get copies of the court order. 30 days' period is impractical and merely onerous.	Instead of 30 days, the time limit should be 6 months.
7	Taxability of income on notional basis u/s 22	The concept of taxability of income on notional basis either under the head 'income from house property' or under other provisions of Income-tax Act should be done away. Only the actual income received by an assessee should be chargeable to tax. Similarly, no disallowance of any expenditure actually incurred by an assessee as per the method of accounting employed by it should be made and for this purpose provisions like section 43B etc. should be deleted.	Restrict taxation of house property income to rent income actually received /receivable and remove taxation of notional income based on annual letting value.
8	23	New clause be inserted to provide deduction of maintenance charges paid to Society, federation etc In most urban areas, maintenance of building is undertaken by the society, federation, company or common body and the expenses for such maintenance are substantial. The same need	Contribution towards maintenance charges actually paid to society, company, federation or common body should be allowed as deduction.

		to be allowed as deduction against rental income so as to ensure that it is only the real income that is brought to tax. There is a spate of litigation that prevails in the country on account of this item of expense. Amending the law and allowing a deduction for the same would lead to considerable reduction in litigation	
9	Section 35D - Amount paid for increase in authorized capital	Currently, amount paid for increase in authorized capital is not allowed as deduction. After a company is incorporated with a minimum paid up capital (for which there is no minimum limit now), and it wishes to increase its authorized capital, the company is required to pay registration fee to Registrar of Companies. Fee on incorporation of a company is allowed as per specified limits in 5 instalments u/s 35D, however amount paid for increase in authorized capital is not allowed as deduction at all, though the amount is paid to government as a fee.	It is suggested that fee paid to Registrar of companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal instalments u/s 35D.
10	36(1)(va) and 43B	There is a matter pending before honourable supreme court regarding allowability of employee contribution to PF beyond due date of deposit under PF Act but paid before the due date of Income Tax return filing, which is leading to additions in case of thousands of assessees.	This hardship should be removed and necessary amendments may be made in Act itself in allowing such expenditure. For eligibility to deduction, the Due Date should be as per section 139(1) similar to section 43B.
11	37	Corporate Social Responsibility Expenditure As per the Companies Act, 2013, it is mandatory for specified companies (as per Section 135) to spend 2% of their average profits towards Corporate Social	As spending on CSR by the corporate sector is for laudable purposes and effectively assisting the Government in undertaking social projects for the country, the deduction must be allowed for expenses on

		Responsibility. These expenses are all connected to social and charitable causes and not for any personal benefit or gain. It is, therefore, fair to allow the same as business expenditure. There is no bar on allowability of CSR expenditure falling under other sections like 35, 35AC etc. At present the Income Tax Act provides that the expenses incurred by the taxpayer on the activities relating to CSR referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be incurred for the purpose of business and hence, shall not be allowed as a deduction for computation of income.	CSR for the purpose of Income tax.
12	44AB	Monetary Limit for Tax Audit of Accounts. At present the Monetary Limit for Tax Audit of Accounts under section 44AB is Rs. 1 Crore.	Based on the inflationary market conditions, the monetary limit for tax audit should be enhanced to Rs.2 Crores.
13	44AB	Tax audit in case of partners of firm In case of a partner of a partnership firm, his share of profit is exempt under Section 10(2A) as the firm pays the tax at the maximum marginal rate. The remuneration and interest received by the partners from the firm is taxable as Business Income. In such cases, an issue has been raised in some cases that even partners are required to get their accounts audited if their share in profit and/or remuneration / interest from the firm exceeds the threshold provided in Sec. 44AB notwithstanding the fact that the accounts of the partnership firm have already been audited under Section 44AB	A clarificatory amendment should be made in Section 44AB to provide that for the purpose of applying Section 44AB in the hands of the partners, the share of profit and/or remuneration/interest received from the firm shall not be taken into account while determining the amount of threshold provided in Section 44AB.
14	44AD	Section 44AD excludes LLP, for which there appears to be no	The benefit of section 44AD should also be made available

		cogent reason. Otherwise under the Act, a LLP and a Firm are treated at par. Even section 44ADA does not exclude LLP.	to LLP.
15	44AD -Monetary limit for presumptive basis	Explanation to the Section 44AD defines "eligible business". It means total turnoveror gross receipts does not exceed an amount of Rs. 2.00 crores. 6% is deemed to be the profit on total turnover or gross receipts if receipts are through prescribed banking channels.Some of the contractors are executing works for various Government departments and Private agencies. Most of the payments are received through proper banking channels.	a) Eligibility criterion should be increased to Rs 5 Crores. b) Rate of presumptive profit should be reduced from 8% to 5% and from 6% to 4% (in case of digital transaction) c) All three segments like manufacturing, Service and Trading should be eligible for presumptive taxation system. Above will reduce Tax litigation to a great extent and untaxed business will be encouraged to contribute in Nation's economy
16	44ADA	Presumptive Taxation for professionals Professions have to offer profit percentage of 50%, the initial recommendation was 33.33% for professional fees less than INR 50 Lakh. From assessment year 2021-22, partnership firms and LLP's are entitled to the benefit of the presumptive provision. However it appears that the profit percentage of 50% has to be submitted to tax after allowance of partners remuneration. The profit of most professional firms is shared by the partners by way of remuneration which is subjected to tax in their hands and is in fact treated as a special share of profits. Therefore, achieving a 50% percentage of profit after remuneration is extremely improbable if not impossible. This would then necessitate all professional firms with receipts of less than INR 50 lakhs to conduct a tax audit	The percentage should reduce considering that lot of expenses are incurred by professionals too these days specially for technology and marketing. The presumptive percentage should reduce to 33 % and even the gross receipts limit should be enhanced to INR 1 crore from INR 50 Lakhs. The profit percentage of 50% should apply before remuneration to partners.

17	Conversion of Current Asset into Stock In Trade - Sec 45(2)	It is suggested to provide deferment of payment of tax on business income from conversion of stock in-trade to capital asset till the final disposal of such capital asset to avoid hardship of payment of tax as both capital gain and income tax are chargeable to tax in the year in which stock in trade were sold or transferred otherwise.	It is suggested to provide deferment of payment of tax on business income from conversion of stock in-trade to capital asset till the final disposal of such capital asset to avoid hardship of payment of tax on unrealized gain and bring clarity with the method adopted on conversion of capital asset into stock-in-trade.
18	Consequential amendment required in section 47(xiiib)	The existing section 47(xiiib) provides that no capital gains tax is payable on conversion of a private limited or unlisted public company into LLP subject to certain conditions. Proviso (e) states that this provision will not apply if the total sales, turnover or gross receipts in the business of any of the three preceding years exceed Rs. 60 lakhs. Since this was an amendment to facilitate conversion of private limited companies and unlisted companies into LLPs, ideally, there should be no restriction on the turnover to avail the benefit of section 47(xiiib). It may also be noted that the parent Act i.e. Limited Liability Partnership Act 2008, allows this conversion without any such restrictions.	Many companies are now converting themselves to LLP. With a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit under section 47(xiiib) or alternatively, the limit of sixty Lacs rupees should be substantially enhanced or the condition of the turnover should be deleted.
19	47(xiiib) - Conversion of company into LLP – Clarification required relating to additional condition	LLP is a preferred form of organization for smooth conduct of business. Accordingly, section 47(xiiib) provides for an exemption enabling smooth conversion, subject to compliance with the conditions. There was a case for making the exemption more liberal by relaxing the turnover limit which is one of the present conditions. However, conversion will	1. In view of the aforesaid, it is suggested that the condition of asset base being less than Rs. 5 crores be rationalized and may be increased to Rs 10 crore. 2. Also, the scope of the term 'value of total assets as appearing in the books of accounts' be clarified to provide certainty and reduce litigation. 3. Another alternative that could be

		become all the more difficult as a result of an additional condition which will deny exemption in a case where the company was possessed of total assets worth Rs. 5 crores in any of the 3 years. The expression "value of total assets appearing in the books of accounts" is not defined and may create certain interpretational issues such as whether status of assets is to be seen on balance sheet date or even one day's presence during the year will be considered if asset no longer exists with the assesse as on balance sheet date. Also, whether 'Miscellaneous Expense' as an item reflected on balance sheet will constitute an asset, treatment of advance tax paid shown on asset side (with corresponding provisions for tax on liability side), etc. are the other issues which need to be addressed.	considered is that on conversion, the assesse pays tax @ 15% subject to compliance of only sub clauses (a), (b) and (c).
20	54EC	The section restricts exemption for investment in capital gains bonds up to INR 50 Lakh. In addition, thereto the benefit is available only for transfer of land or building. On account of the restrictive nature of the current provision the benefit is restricted only to a few taxpayers. Those taxpayers who transfer assets other than land and building say shares are not eligible. Further since the words used are land and building, it is debatable whether rights therein or in regard thereto, say tenancy or leasehold rights will qualify. Further the limit is also small considering the possible gains by senior citizens who have held assets	a) The ceiling for making investment in specified assets be increased from Rs. 50,00,000 to Rs. 1,50,00,000. b) The restriction in regard to the asset class should be removed. This will also help the Government in generating funds at much lesser cost, especially when the government is burdened with high cost of borrowing. This step will also will provide impetus to the infrastructure sector. c) Further, since the lock in period has now been increased to 5 years, if the limit is also increased, the government will have more funds for a longer period at lower cost.

		for a very long period.	d)the time limit for making investment in such Bonds should be allowed upto the due date of filing the Income Tax Return by the assessee instead of present time period of only 6 months from the date of sale of original asset. e)Moreover the benefit of section 54 EC should also be extended to capital gains on all assets. It should not be restricted to only in case of capital gain arising from land or building or both.
21	54F	the deduction is available only if the assessee does not hold more than one residential property at the time of making investment under this section. Similar provisions of restriction of holding one property is not present in section 54 which is also an investment linked deduction.	If the assessee is making an investment of sale proceeds than deduction should be allowed across all sections of deductions irrespective of number of residential properties held by the assessee.
22	Section 56 (2)	Under section 56 (2)(vii) in clause (e) of Explanation, the definition of the term "relative" inter alia, covers the following: "spouse of the person referred to in items(B) to (F)." In case of an HUF only the members of the HUF are considered as relative. Gift from uncle/aunt is exempt in the hands of the recipient nephew/niece. However, converse is not true i.e. a gift from nephew/niece is taxable in the hands of the uncle/aunt. This does not seem to be intended. In case a relative wants to give gift to the HUF, the same is taxable as against the gift to an individual by the same person is not considered as income.	The word "spouse" should be substituted with the word "spouse or children" and it should be clarified that "relative" includes maternal grandparents. In case of HUF, a relative of the Karta should also be considered as a relative.
23	56(2)(x) –Clarification	As per the Section 56(2)(x), if	A suitable clarification may

	w.r.t. issue of shares	any person receives any property on or after 1 April 2017, without consideration or for considerationwhich is less than the aggregate fair market value by an amount exceeding Rs 50,000, the difference shall be taxable under the head Income from Other Sources' in the hands ofthe recipient.The intent of legislation is to bring within ambit of taxation instances of 'transfer' for inadequate consideration and not 'issue' of shares.	be issued that section 56(2)(x) is applicable only for transfer of shares and not for issue of shares
24	Section 71(3A) - Loss from House Property	Section 71 of the Act provides for set off of any loss arising under the head "Income from House Property" against any other head of income. As per section 71, it is restricted to set off the losses to the extent of Rs 2,00,000 against any other head of income and the unabsorbed loss to be carried forward up to subsequent 8 assessment years. The amount of interest paid is always higher than the rental income earned against such property and as per the current provisions the loss could be set off against other income. Many of them have borrowed to acquire a house which is self-occupied. Further, the Finance Minister in his budget speech focused on housing development	It is therefore suggested to withdraw the said amendment. Alternatively, the limit of Rs 2 lakhs may be raised to at least Rs 5 lakhs.
25	Section 80C	Over the years, investments made in various avenues available under Section 80C of the Income tax Act have has been helping the Government to raise funds as well as the individuals to save tax.	The Government may look at increasing the overall deduction limit to at least Rs 250,000 to boost further investment and increase tax savings for the individual and HUFs. Further the amount to be deposited in PPF account may be increased to Rs. 2,50,000 in place of present

			Rs.1,50,000. The contribution by HUF should also be allowed.
26	NATIONAL PENSION SCHEME 80 CCD	Government introduced National Pension Scheme in 2012, but the same is not so popular (especially among the young generation), as its withdrawals are not fully exempt. Further, the social security system of India is not so robust that it will take care of the individuals after their retirement.	Improve the participation under the NPS, withdrawals should be made fully exempt from taxation
27	80G –Request to reconsider cap of 10%	Section 80G provides deduction to the certain prescribed donations subject to the ceiling of 10% of gross total income. This ceiling gives additional tax burden for generous donors	It is suggested that the ceiling of 10% of gross total income may be reconsidered u/s 80G.
28	194J	No TDS is required if the amount of sum in aggregate does not exceed 30000. There is no such exemption limit for deduction of tax in remuneration or fees or commission to director	Suggested that section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.
29	80TTA	It provide deduction of up to Rs.10,000 in the hands of individuals and HUFs in respect of interest on savings account with banks, post offices and cooperative societies carrying on business of banking.	It is suggested to provide interest on all types of deposits (eg FDRs) may also be included within the scope of section 80TTA
30	80TTB	It allows a deduction upto Rs 50,000/- in respect of interest income on deposits made by senior citizens	It is suggested that income by way of interest on National Savings Certificate also be included within the ambit of provisions of section 80TTB, so that senior citizens who have purchased NSCs from post offices are also able to avail the benefit of enhanced deduction under section 80TTB.

31	111A, 112A 115AD	Recently tax rates for corporates have been reduced and MAT rates have also been reduced. However the rates of taxes for Non-corporate such as LLPs, partnership firms and AOPs continue to be high. Similarly the rates for individuals earning high income are also exceedingly high. Captital Gains other than those under section 111A, 112A 115AD, are also subject to high surcharge applicable to individuals. Exemption rates and Slab rates need to be reviewed for all non-corporate entities and brought down to 25%.	Suggested Slab Rates Income upto 4 Lakh NIL Onward 4 lakh to 5 lakh 5% Onward 5 lakh to 10 lakh 10% Onward 10 lakh to 20 lakh 15% Onward 20 lakh and above 20%
32	**115BAC**	**Personal Income tax**: We appreciate the alternate tax regime offered for personal taxation under section 115BAC.	Deduction for medical insurance premium under section 80D should be allowed to help taxpayers to keep their medical policies alive in view of exorbitant medical expenses. Rebate u/s 87A should be allowed in case of taxpayers opting for **sec. 115BAC**.
33	Tax under sec. 115BBE:	If the department treats surrendered income as deemed income it will be subject to tax at the rate of 60 per cent plus 25 per cent surcharge and education cess. The effective aggregate rate u/s 115BBE now 78 per cent. If the A.O. makes addition penalty under section 271AAC may also be levied @ 10 per cent of tax, which will make the overall burden @84 per cent on assesse. It is prohibitive and needs urgent review	It is desirable that tax under sec. 115BBE should be at best 30 per cent or the maximum marginal rate. The rate was basically increased drastically due to demonetisation. It should be brought back to pre asst. year 2017 -18 level. It may kindly be appreciated that additions under sec. 68. 69, 69A, 69B and 69C of the Income Tax Act, 1961 are deemed additions and not necessarily the actual or real income.
34	Section 144B-	The opportunity for personal	Opportunity should also be

	Faceless Assessments	hearing is given under the section only at the discretion of the authority. Further, the transfer of case from faceless to JAO can be done only at the discretion of authorities.	given to assessee for personal hearing of video conference and the same being a constitutional right, it cannot be subject matter of discretion. In some complicated cases, the assessee should be given opportunity to ask for transfer of case physically to JAO. iii. Some suitable exceptions are required in the faceless assessments like set aside assessments, cases of super senior citizens, cases of individuals having only salary income and paying TDS, technologically backward states etc.
35	179	In many cases provisions of section 179 are being resorted by the Assessing Officer even prior to decision in appeal by CIT (A) or ITAT and also without firstly exhausting its remedy for recovery of tax demand against the company.	Provisions of section 179 are to be resorted to only if the demand has been finally settled and the Assessing Officer is not able to recover the same from the company. Proceedings are not to be used for harassment of the directors, or threatening them by attaching their personal bank accounts. Necessary provision needs to be made in the section to exclude action at least in case of Independent Directors.
36	194IB / 195-TDS on Payments of Rent by CertainIndividuals / HUF	It is presently provided that rent payment exceeds Rs. 50000 per month /, TDS of 5%, is required to made. As an important compliance relaxation, it has been further provided that, TDS can be made once in a year and 1 Challan cum Return can be filed without going through the regular elaborate TDS Compliances / procedures In contrast, if the owner / lessor happens to be a NRI, Section	Even in cases where Rent payments are made to NRI, provisions on lines with 194IB, needs to be introduced. It would ease compliance for Individuals /HUF who are not registered for TDS

		195 becomes applicable resulting in the following TDS at the rate of 31.2% without threshold limit Tenants (who usually would not be registered for TDS) would have to comply with elaborate TDS related compliances & procedures	
37	206C(1H)	Only listed securities have been carved out of section 206C(1H) of the Act. Further, the key terms such as 'goods', 'turnover' etc. are not defined in the section. The term 'goods' on which the entire gamut of section 206C(1H) depends, is not defined. Hence, support needs to be taken from other Acts. GST Act and Sale of Goods defines the terms 'goods' differently and thus the Tax Officer may take different definition than the one taken by the assessee. Further, while the key terms are not defined, CBDT has issued a circular clarifying various queries. One of the clarifications given by the CBDT is that the provision of section 206C(1H) of the Act would not apply to listed securities. Thus, it appears that unlisted securities could get covered by section 206C(1H) of the IT Act.	Securities, whether listed or not, should be out of the purview of section 206C(1H). Further, key terms such as 'goods', 'turnover', may be defined so as to minimise the risk of protracted litigation.
38	207(2)	The provisions of sub-section (1) [relating to payment of advance tax] shall not apply to an Individual residents in India, who – a) Does not have any income chargeable under the head "Profits and gains of business or profession"; and b) Is of age of 60 years or more at any time during the previous year.	For many provisions including section 80C the HUFs are treated at par with Individual tax payers. We recommend that sub-section(3) may be inserted to section 207 to provide that the provisions of sub-section (1) of section 207 shall not apply to Hindu Undivided Family if it does not have any income chargeable under the head "Profits and gains of business

			or profession" and the Karta of the HUF is of age of 60 years or more. Such provision will immensely help the HUFs being looked after by senior citizen as its Karta.
39	Payment of advance tax –section 209	The threshold limit of INR 10,000 for payment of advance tax as per section 208 has been last amended by Finance Act, 2009. Considering the inflation in the economy, there is a need to increase. Further, the requirement to pay 15% advance tax for non-corporate assesses by 15th June causes unnecessary hardship, since it is extremely difficult to estimate the total income for the entire year within a mere 75 days from the commencement of thefinancial year. The hardship is further compounded by the levy of interest u/s. 234C for shortfall in the instalment of advance tax paid.	The threshold for payment of advance tax should be increased from the present Rs. 10,000 to Rs. 1,00,000.The requirement to pay 15% advance tax by 15thJune for non-corporate assesses should be removed
40	234F – Fee for default in furnishing the return of income.	a return claiming refund can be filed within one year from the end of the assessment year. As per section 234F, even such cases are covered and are liable to the fee u/s 234F. This results in such persons having to unnecessarily pay a fee even though the revenue is not adversely affected by the late filing of the return.	No fee should be charged from a person who files the return of income beyond the normal time limit and in whose case, a refund is due as per the return filed
41	Time limit for carrying out appeal effect by the Assessing Officer or passing Order by Appellate Authority u/s 250(6A)	Presently, the Act provides for time limit for completing assessment by the Assessing Officer. There is no doubt as regards the legal position that in case the assessment order is not framed within the specific time limit, the Assessing Officer cannot make the	In case the appeal is not decided by CIT(A) within the time limit u/s 250(6A) of the Act, the appeal should be deemed to be allowed. Making the aforesaid provisions in the Act will not in any way bring any adverse result for the obvious reason

		assessment order thereafter. Similar should be the position in regard to appeal effect. In case the Assessing Officer does not take the necessary action within the stipulated time limit, the action will be deemed to have resulted in favour of the assessee and no adverse order can be passed. Otherwise, placing time limits for appeal effect, etc. have not brought any effective result and still the matters continue to be pending with the Assessing Officer for quite long time.	that when there is compulsion under law the Assessing Officer or the CIT(A) will definitely take the necessary action within the stipulated time limit. It will bring a discipline in the performance of the officers.
42	Exercising of powers u/s 263 of the Act	It is being practically seen that powers u/s 263 are exercised in a routine manner and in spite of detailed submissions or legal requirements, no care is taken by the concerned officers. It is necessary that the provisions should be more specific, duly supported by the necessary guidelines for exercising the powers under these sections.	There should also be proper training and also check within the department so that actions taken are upheld in appeals. It is well known that because of casual approach of the officers actions taken under above sections in most of the cases fail in appeals. We welcome the amended provisions of sec. 147, 148 and new section 148A inserted in Finance Act, 2020.
43	Provisions regarding levy of penalty for under-reporting or mis-reporting of income: Sec. 270A	No provision dealing with a situation where tax has been paid but only return is not filed. As is well known there had been substantial litigation in respect of provisions of section 271(1)(c) of the Act. Further, it is also not clear that at what stage the Assessing Officer will levy the penalty and will determine whether it is a case of under-reporting or mis-reporting. Accordingly, provisions need to be simplified so as to avoid litigation in this regard.	(i) As a general principal penalty will be leviable only after the decision in appeal by ITAT, which is against the assessee and the issue has not been admitted by the High Court as substantial question of law. In case the issue has been admitted by the High Court as substantial question of law, as a matter of principle, it cannot be said that penalty is leviable in respect of the same. Further, in case the tribunal has allowed the deduction for an expenditure, penalty will not be leviable even if the department is contesting in

			the High Court. (ii) In case the addition has been upheld by ITAT, as a simplification of the penalty provisions it should be provided that penalty will be leviable equivalent to, say, 30% of the tax amount payable on such addition. The law straightaway should provide that assessee has to pay 30% of tax as additional amount in the nature of penalty. In case addition made by the Assessing Officer has been deleted in appeals, the assessee should equally be entitled to compensation for the harassment and cost of litigation and for this purpose a straightaway tax rebate of, say, 20% of the amount of tax leviable on such addition should be allowed to the assessee.
44	115QA for buy back of shares	Purchase price by company of its own share should be either at book value or fair market value it is not clear and disputable point.	We need to bring clarity in this point.
45		Inquiry in the firms by Income tax and GST officer.	Income tax and GST officer should go for inquiry only in those firms whose annual sales are 10 crores or more.
46	Tax Rates for Partnership	The rate of income tax on a partner firm or LLP registered under GST should be in tandem of Corporate Law,which is currently 30 percent .	This effective rate of Income Tax should be 22 percent.
47	Dividend Distribution Tax	Dividend distribution tax should be abolished atleast for closely held/family owned private limited/ limited companies.	This will incentivize promoters of these companies and will ensure extra liquidity in promoters hand so that money may be utilsied for some other business activities.
48		Education and higher education cess should be completely	

		abolished from income tax.	
49		Excessive Deduction of Tax at source is a capital blocking exercise. In the year 2019-20 CBDT issued refund order to the tune of 2 Lakh Crores approx which indicate that excessive level of rates under TDS. TDS provisions should be applicable to the entities whose turnover exceeds Rs 10 crores in previous year.	
50		Imposition of special tax on online business To curb online business, the government should bring a law and impose a special tax at the rate of 5% on online sales so that small shopkeepers can survive.	
51		Non Applicability of provisions of Minimum Wages Act on Traders having less than 10 employees Due to political reasons, various state governments have been increasing the minimum wage in a prudent manner, which is becoming almost impossible to bear and the employment is ending in place of employment due to the minimum wage. Eight central government should decide a reasonable minimum wage in consultation with the merchant organizations regarding the minimum wage	
52		All other Faceless sections – for appeals, penalty and Re-opening The provision to introduce the faceless schemes for a majority of the procedural sections have already been made in the Act, however there is no scheme which has been enacted yet for those sections. This creates confusion as to what is the	Suitable quick measures should be taken to correct these anomalies and bring the schemes as provided for at earliest. Further substantive procedural changes should be brought in the Act itself and should not be left to circulars and notifications.

		current status of these sections, whether they continue to be done physically or they fall under faceless set of schemes. (Practically notices for all such sections except for section 148 are continued to be sent through NeFAC)	
53	Charitable purpose Section 2(15) Limit of 20% in the definition of "Charitable Purpose"	Several difficulties are faced by small charitable organisations and therefore there is a need to amend the definition and relax the upper limit of 20% of total receipts.	In place of existing clause (ii), the following may be substituted: "The aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, or rupees One crore, whichever is higher, of the trust or institution undertaking such activity or activities, of that previous year."
54	Faceless Assessment Scheme-2019 :	a)The concept of accountability may be established in the faceless assessment scheme b)Imposing unrecoverable tax demand on the assesse may be equivalent to killing the small taxpayers / citizens. To a great extent, human touch was there during the earlier physical assessment system. However, this human touch is totally missing in the faceless assessment scheme and abrupt high pitched assessment orders are passed without realizing the fact that the taxpayers are human beings.	a) It is humbly prayed that penalty may be imposed on the assessing officer for error or intentional high pitched. Assesse may be given the right to demand for fixing the accountability of the assessing officer. Independent "Accountability Examination committee" may be formed wherein not only the departmental team but also people from profession & ITAT may be taken so as to ensure the intended purpose. b) It is humbly prayed that every order proposed with addition of amount more than the returned income may be passed through the test of "Human Touch" whereby the case may be examined from human angel as well.
55	Limited Liability Partnership (LLP) - (a) Section 47 –	Clause (vi ab) is inserted in section 47 so as to provide exemption in respect of any	New clauses may be inserted in section 47 to provide for: Consequent exemption in

	Insertion of clause (vi ab) to provide exemption in respect of transfer of capital asset consequent to amalgamation of foreign companies - Consequent exemption to be provided in respect of transfer of shares by resident shareholders	transfer in a scheme of amalgamation, of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company. However, no clause has been inserted to provide consequent exemption in respect of transfer of shares by the resident shareholders of amalgamating foreign company in consideration of allotment of shares of amalgamated foreign company. This appears to be an inadvertent omission, since in case of exemption under section 47(vi) in respect of transfer of capital asset in a scheme of amalgamation by an amalgamating company to the amalgamated company, where the amalgamated company is an Indian company, consequent exemption has been provided under section 47(vii) in the hands of the shareholders of the amalgamating company for transfer of shares of amalgamating company in consideration of allotment of shares of amalgamated company. Further, transfer in a scheme of business reorganization of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company should also be exempt under section 47.	respect of transfer of shares by the resident shareholders of the amalgamating foreign company if transfer is made in consideration of the allotment to him of any shares or shares in the amalgamated foreign company. exemption in respect of transfer in a scheme of business re-organization of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company.

SUGGESTIONS ON GST LAW

1. **Procedural Rationalisation of ITC matching:** As per section 16(2) of CGST Act, 2017 and Rule 36(4) ITC has been restricted to[1] of that reflecting in GSTR-2A. The difficulties faced due to this provisions are as following:
   - **Quarterly filing of returns (GSTR-1) by the supplier: Mismatch due to time difference in filing of return**
   - **Reconciliation of GSTR-2A with ITC as per books is a time consuming process as every month reconciliation is also required to be done for previous months ITC.**
   - **Blockage of working capital as tax already paid by recipient but ITC delayed to due to non filing of return by supplier.**

   Suggestion: To omit the applicability of the Rule imposing restrictions limiting input credit of ITC appearing in GSTR 2A.

2. **Time Line as per Section 16:** The time line for claiming ITC for the financial year as per section 16 (4) is earlier of the following:

   a) Date of filing the Annual Return or
   b) Due date of filing return under section 39 for month of September of the following year, which is 20th of October.
   The issue involved here is that the due date for filing GSTR-1 quarterly is 31st October for month of September, which is later than the due date of section 39 return. Hence, ITC related to suppliers filing quarterly return may lapse. Considering the provisions of Rule 36(4) section 16 shall be amendment accordingly.

   Suggestion to extend the time limit for availment of ITC to due date of furnishing the Annual Return.

3. **Restriction on eligibility of ITC:** As per section 16(4) one of the eligibility criteria for availment of ITC is that the supplier should have filed the return.

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[1] 20% till December 2019 and 10% w.e.f. 01st January, 2020.

The issue here is that in many cases the recipient has already made the payment of ITC to the supplier but due to non-compliance and non-payment by the supplier, the ITC is not available to the recipient. Further at times due the supplier must have also paid the tax but has shown the supply as B2C instead of B2B transaction, due to which ITC is not available to the recipient.

Suggestion-Since the tax has already been paid by the recipient and will be duly recovered or must have been recovered by the Government, the ITC shall not be denied to the recipient. Restriction of such ITC tantamount to unjust enrichment in hands of the department. Further the department cannot punish the recipient due to mistake of the supplier.

4. Blocked Input Tax Credit

As per Section 17(5) of the CGST/SGST Act 'Input tax credit shall not be available in respect of the:

(*c*) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(*d*) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Issue - Input Tax Credit on works contract and construction services are blocked Credits except in case where used for providing similar service. This can cause a genuine hardship to the persons who shall be using such goods/services for construction of their factory, or those persons who shall be constructing a property for letting it out. In such cases the rentals would be charged with full rate of GST, but there won't be any allowability of credit of GST paid on construction services/goods.

Suggestion – It is suggested that credit of goods/services acquired in the construction of immovable property should be extended when used for factory/office buildings which are used for business or further letting out.

5. Invoicing

Issue – Section 31(3)(g) of CGAT Act, 2017 requires issuance of payment vouchers at the time of making payments to such vendors.

These compliances creates huge burden on the registered person

Suggestion - Issuance of payment voucher should be done away with.

6. Delivery Challan

Issue - Rule 55 of CGST Rules require issuance of delivery challan for transport of goods without issue of invoice. The prescribed particulars to be mentioned on such delivery challan include *taxable value*. However, it is practically difficult in most of the cases to provide the taxable value of goods being transported for reasons other than supply such as job work, etc.

Suggestion - Mentioning of taxable value should not be mandatory on delivery challan (for all registered persons or for those having aggregate turnover below a specified threshold) and the relevant rules should be modified accordingly.

Alternatively, a specific valuation mechanism should be specified in the valuation rules for the taxable value to be mentioned in case of delivery challan for goods sent to job worker.

7. Section 9(3) of CGST Act, 2017

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Issue:

An unregistered recipient of specified categories of goods or services or both, shall be liable to pay tax on such goods and services, as if he is the person liable to pay tax. For the purpose of paying the tax, he shall be liable to get registered under the Act. And once he gets registered under the Act, he shall be liable to comply all the provisions of the Act, which are applicable to a registered person:

a) File all the periodical returns from time to time

b) Pay tax on reverse charge basis under section 9(4) - at present suspended till 31st March,2017

Suggestion:

Up to a certain threshold of tax liability, the recipient should be given a facility of paying tax through a challan cum return mode as is available to a deductee under the Income Tax Act, 1961. Whenever a person purchases an immovable property exceeding 50 lakhs, he is liable to deduct 1% of the total consideration paid to the seller. After deducting the tax, he has to pay the tax to the credit of the Central Government. Without taking registration under the provisions of TDS, he is given the facility of paying the tax through form 26QB.

Similar facility can be provided in the GST law, so that any person liable to pay tax under section 9(3) of the Act, can do the same without being liable to comply with several provisions of the Act which have been mentioned above.

8. Place of Supply

Section 12 of IGST Act, 2017 prescribes the determination of place of supply of services where both service provider and service recipient are located within India.

Issue - It has been observed that in many cases such as Accommodation services in Hotels, the place of supply has been specified to be the location of such hotel. Hence the service provider is charging CGST and SGST in such cases. However there are situations where the service recipient is registered in some other state outside the state where such hotel is located and hence such recipient is not getting the credit of such tax paid.

Suggestion – It is suggested that place of supply of services covered under Section 12 of IGST Act, 2017, should be specified to be the place of registration of the service recipient in case of registered persons and address on record in case of unregistered persons, and where no address is available for such unregistered recipients, then place of supply can be deemed to be location of service provider.

9. Transfer of Land etc. by way of compulsory acquisition, inheritance, testament, gift etc.

Clause 5 of Schedule III of CGST Act, 2017 as specified in Section 7 provides that Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building would be treated as an activity or transactions which shall be treated neither as a supply of goods nor a supply of services.

Issue Sale does not include transfer of land by way of compulsory acquisition, will, inheritance, testament etc. Such transactions if kept out of the purview may create problems and confusion.

Suggestion

It is suggested that the word 'transfer' should also be included as an activity or transactions which shall be treated neither as a supply of goods nor a supply of services. Also it should be clarified that transfer of right in an immovable property by way of nomination by a person to another person will also be out of GST.

10. Refund in case of accumulated Credit where input tax credit amount is higher than tax liability.

Sec 54(3)(ii) of CGST Act provides that no refund of unutilised input tax credit shall be allowed in cases other than where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Issue:

A manufacturer or a service provider may have accumulated credit balances for the reason that he is availing input services which attract at higher rate of GST (say, 18% or 28%) whereas

the final product or output service attracts GST rate of 18% or 28%. However, this provision allows refund benefits only if the input is subject to higher rate of GST and not in case where the input service attracts higher rate of GST. If a strict interpretation is taken that refund would be allowed only if the GST rate of input is higher without considering the rate of input service, then the very object of the provision would stand defeated.

Suggestion

It is suggested that **the word 'inputs' be replaced with the phrase 'inputs or input services'**

Also, the word 'Output Supply' be replaced with the word 'Outward Supply'

11. Definition of Exempt Supply

As per the definition given in Section 2(47) of CGST Act, "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Issue

Non-Taxable Supplies have been excluded from the scope of Aggregate Turnover in the CGST Act but still the term "Exempt Supply" covers the same. Thus, inclusion of non-taxable supply in the exempt supply would ultimately bring it within the scope of aggregate turnover.

Interpretation of aforesaid definition appears that supply made to job worker covered under exempt supply.

Since a registered taxable person may send any inputs and/or capital goods without payment of tax, to a job worker for job-work and therefrom subsequently send to another job worker.

Suggestions

It is suggested that non-taxable supplies be kept outside the ambit of 'exempt supplies' as well as 'aggregate turnover'. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.

An amendment may be required in said definition that ''Exempt supply means any supply of goods/services which are non-taxable under this act other than supply for job work in accordance with Section 143 of the Act and includes such supply of goods or services or both, which attract nil rate of tax or which may be exempt from tax under section 11.

12. Valuation of land

As per Notification no. 11/2017-Central Tax (rate), the value of land has been prescribed to be 1/3rd of the total amount charged

Issue - The value of land may have huge variations from one place to the other. In certain areas of the metro cities, the value of land may run upto 80% of the total amount charged while in the smaller developingareas, it can be as low as 15% of the total amount charged. So, there can be a huge under or overvaluation of the amount to be charged as GST.

Suggestion – A reasonable basis to determine the value of land should be prescribed. Land values may be prescribed by state authorities on the basis of pin code, area etc. and the same can be considered as a reliable measure of the same.

13. **Tax liability on TDR, FSI (additional FSI), long term lease (Notification No. 4/2019, 5/2019, 6/2019 of Central tax (Rate):**

Issue - Applicability of tax payable under RCM by promoter on unbooked flats will indirectly lead to levy of tax on sale of such flats post issuance of completion certificate (C/C). This in effect nullifies the fact that there is no GST on sale of flats post C/C (Schedule III activity).

Moreover such tax on transfer of development right, if applicable earlier, was a credit topromoters, but now the same has become cost to the extent of unsold flats.

In case of an RREP, even if the rate of tax for commercial apartment would be at 5%, the promoter would have to pay tax on RCM basis to the extent of proportion of commercial area. This has a big cost implication for commercial apartments and effectively would mean double taxation on commercial apartment in an RREP.

Suggestion – GST payable by Developers under RCM pertaining to unsold flats should be removed

The GST exemption on supply of development rights be extended to the commercial apartments in RREP, since they have been treated at par with residential apartments.

14. **GST on Leasehold units (Commercial)**

Issue - In several cases, Developer constructs a commercial building on a leasehold land (say for 999 years) and transfers units to the buyers with leasehold right in land. As per Explanation (b) to para 2 of Notification no.11/2017 – Central Tax (Rate) dated 28th June 2017, 1/3rd of the total amount charged shall be available as deduction for transfer of such leasehold land before obtaining completion certificate**.**

Deduction of 1/3rd value from the total amount charged is available on supply of leasehold land involved in construction services before obtaining completion certificate, deeming it as a sale of land and effective rate is 12%. When the constructed units on such leasehold land are transferred after Completion certificate, how can the same be taxable considering it as a leasing activity at full rate of 18%?

Suggestion – Transfer of Constructed units on Leasehold land (on long term lease) after completion certificate is obtained where appropriate stamp duty is paid, should be included in Schedule II to CGST Act i.e. activities which are neither supply of goods nor supply of services.

15. Compliance of definition of supply as per Sec 7 read with schedule 1 for related persons

Issue: As per the definition of supply in section 7 read with Schedule 1 entry for related persons, it is seen that in hospitality sector and other similar sectors were food is being provided by the companies to their employees which is not a part of CTC of the employee and neither any reimbursement is being done from the employees, the companies have to pay GST on such supplies because of deeming fiction in schedule 1 treating the same as supply. Moreover, the valuation of the same is also stated to be done as per open market value as per Rule 28 of the CGST Rules, 2017 as amended from time to time. This is creating unnecessary financial burden on the company and in turn on the employees also.

Suggestion: Schedule 1 may be suitable amended to provide that in case of supply of goods/services by employer to employee would not fall under the definition of related persons and thereby no such tax has to be paid on supply of food. Otherwise, it may be clarified that supply of food by the company would be treated as in course of employment and hence covered by Schedule 3 of the Act.

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