CALCUTTA CHAMBER OF COMMERCE

POST-BUDGET MEMORANDUM

ON

UNION BUDGET

2018-19

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Post Budget Memorandum on Union Budget : 2018-19

DIRECT TAX

1. Reduced Corporate Tax Rate of 25%

In the Union Budget, 2017, the Corporate Tax Rate was reduced to 25% for companies whose turnover was less than Rs.50 crores. Now it is proposed that the reduced rate of 25% be applicable to companies who have turnover up to Rs.250 crores in the financial year 2016-17.

However, the continuation of inclusion of word "Gross Receipt" for the purpose of calculating the limit of Rs.250 crores restricts the eligibility of the domestic companies availing the benefit of reduction of rate to 25% especially SME Companies having high receipts from other sources other than operational activities.

Further, there is no reason to restrict the benefit of concessional rate of tax @25% to small companies. The Firms and LLPs also cater to the SMEs and have substantial contribution of SME section. It is therefore suggested that :

(1) **The word "Gross Receipts" should be removed for the purpose of calculating the limit of Rs.250.00 crores.**

(2) **The Concessional rate of tax of 25% be extended to other tax payers like Firms, LLPs, proprietorship firms etc.**

(3) **The domestic companies not in existence in the previous year 2016-17 i.e. companies incorporated after 01.04.2017 should be given benefit of concessional rate of tax of 25%.**

2. Increase in the Rate of Cess

At present there is a three percent cess on personal income tax and corporation tax, consisting of two percent cess for primary education and one percent for secondary and higher education.

It now proposed that the existing **three** percent education cess will be replaced by **four** percent **"Health and Education Cess**" to be levied on the tax payable.

As it is various kind of **Cess** and Leavy of **Surcharge** tend to complicate the tax system. The Cess was initially imposed in 2007-08 to raise and utilize the fund so collected to finance the specific scheme for Secondary and Higher Secondary Education.

The proposed increase in rate of cess will have extra burden on tax payers.

It is therefore, suggested to retain the rate of cess at three percent, if at all it cannot be totally withdrawn.

3. Minimum Alternate Tax – Sec.115JB

It is proposed to amend Sec.115JB to provide that the aggregate amount of unabsorbed depreciation and loss brought forward from earlier years shall be allowed to be reduced from the book profit, if a Company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the adjudicating authorities.

Consequently, a company whose application under IBC 2016 has been admitted would henceforth be entitled to reduce the Loss brought forward and unabsorbed depreciation for the purpose of computing book profit u/s 115JB

Under the existing provisions, the unabsorbed depreciation or brought forwarded loss whichever is lower can be deducted for computing Book Profit.

It is suggested that similar relief of entitlement to deduct carry forward loss and absorbed depreciation from book Profit should be granted to the companies continuously incurring losses to save such companies from becoming insolvent and make application under the IBC 2016.

4. Conversion of Stock-in-trade into Capital Assets

At present, Sec. 45 of the act provides that Capital Gains arising from conversion of Capital Assets into stock-in-trade shall be chargeable to tax. However, in cases where the stock-in-trade is converted into or treated as Capital Assets, the existing law does not provide its taxability.

The Finance Bill 2018, proposes to tax the profit or gain arising from conversion of Stock-in-trade (Inventory) into Capital Assets as "Business Income", in the year of conversion (Sec. 28 (via) and 2(24)(xiia)) on the basis of market value on the date of conversion. Consequently, the difference between cost of acquisition and Fair market Price on the date of conversion will be taxed as deemed income in the year of conversion.

The proposal of charging tax as deemed income in the year of conversion of Stock-in-trade into Capital Assets is not in the line with the taxability of existing provision of conversion of Capital Assets into Stock-in-trade. In the existing provision, the Capital Gain or business Profit is charged to tax in year of actual sale and not in the year of conversion.

In order to provide symmetrical treatment of taxing the profit or gains under both the situation i.e. conversion of Capital Assets into Stock-in-trade or Stock-in-trade into Capital Assets, it is

suggested that the profit or gain arising from conversion of Stock-in-trade into Capital Assets should also be taxed as deemed income in the year of actual sales.

5. **Restriction of Investing Capital Gains in specified Bonds**

Under the existing provisions, Capital Gains arising from transfer of a long Term Capital Assets shall not be charged to tax, if it is invested in specified bonds (bonds issued by NHAI or RECL), redeemable after **three years**, at any time within a period of six months from the date of transfer.

Now, it is proposed to restrict the Scope of Section only to Capital Gains arising from transfer of Long Term Capital Assets being **Land or Building or both** and the lock-in-period increased from **three years to Five years.**

Both the proposed amendment in Sec 54EC i.e. restricting the scope of investment in such bonds in case of Capital Gains arising from transfer of **Land or Building or both** only instead of any other Long Term Capital Assets and increasing the lock-in-period from 3 years to 5 years will adversely effect the tax payers, especially the taxpayers having Capital Gains from Long Term Assets other than Land or Building or both. In such cases, the small tax payers will have no other option but to pay tax and face liquidity problem. The higher lock-in-period will result into loss of income as the return on other investments are generally expected to be higher than the return from investment in such bonds.

It is therefore, suggested to withdraw the proposed amendment in Sec. 54 EC of the act.

6. Real Estate Transactions

At present, while taxing income from Capital Gains (u/s 50C), Business Profits (u/s 43 CA) and Other Sources Income (u/s 56) arising out of transactions in immovable property, the Sale Consideration or Stamp Duty Value whichever is higher is adopted for determining the Profit or Gains. The difference is taxed as income in the hands of the purchaser and the seller.

It is now proposed that no adjustment shall be made in cases where the variation between the Stamp Duty Value and the sale consideration is not more than 5% of the sale consideration.

It is well known that circle rates or valuation for levy of Stamp Duty is arbitrarily determined by the Registrar or Addl. Registrar on the basis of the areawise rates prescribed by the State Government and always tends to be substantially higher compared to actual rates and therefore, the proposed 5% difference in two values is inadequate.

Further, in case of Sale of Immovable Property through the process of auction or otherwise by Banks, Courts, Quasi Judicial Authorities or other Government Agencies, the Sale consideration is always determined in a most transparent manner and therefore, the difference in Sale Consideration and Stamp Duty Value should not be taxed in the hands of buyer or seller.

It is therefore, suggested that :

1) The proposed difference of 5% be increased to 15% and

2) The transaction of Sale by the Government Agencies, Courts, Banks, Quasi Judicial Authorities should be kept out of perview of the applicability of the deeming provisions u/s 50C or 43CA or u/s 56 of the Income Tax Act.

7. **Cash Payment by Charitable Trusts and Other Institutions**

At present there are no restrictions of payment made in cash by charitable or religious trust or other institutions having exempt income and there are also no checks on whether such trust or institutions follow the provisions of Tax Deduction at Source under chapter XVII –B of the Income Tax Act.

In order to encourage a less cash economy and check the applicability of provisions of TDS, it is now proposed that the cash payment in excess of Rs.10,000/- (Sec.40A(3) or 40A(3A)) and payment without deduction of tax shall not be treated as application of fund for the purpose of determining the application of income u/s 11(1) of the Act, and such payments will be chargeable under the head "Profit and Gain from the Business or Professions".

The hospitals, educational institutions and charitable/Religious trusts work under different environment in remote areas and the proposed restrictions of payment in cash will adversely effect their working. It may not be practically possible for the hospitals and charitable trusts to avail the services of any organization in the remote areas unless they agree to make payment in cash.

It is, therefore, suggested that the limit of cash payment be increased from Rs.10,000/- to Rs.50,000/-.

8. Extending Benefit given to Senior Citizen to all the Assesses

The monetary limit of deduction u/s 80D of the Act in respect of payment towards annual premium on health insurance policy or preventing health check up of a Senior Citizen or medical expenditure in respect of super Senior Citizen proposed to be increased from Rs.30,000/- to Rs.50,000/-.

Similarly, the monetary limit of deduction available u/s 80DDB in respect of amount paid for medical treatment of specified diseases in respect of super Senior Citizen have been increased from Rs.80,000/- to Rs.1,00,000/- and in case of Senior Citizen from Rs.60,000/- to Rs.1,00,000/-.

It is suggested that the benefit of increased monetary limits be extended to all the assessees in view of substantial increase in the cost of medical treatment.

9. **Miscellaneous**

Under Clause 52 of Budget paper u/s 276CC of the act, in the provision relating to direct taxes, a reference has been made to the term "Shell Companies", where the term "Shell Companies" has not be defined in either Income Tax Act or the Companies Act.

Now a days, it is becoming a common practice to brand a company as shell company and the tax payers, in absence for proper definition find it difficult to defend themselves that they are genuinely carrying on business and not involved in any kind of malpractices.

It is therefore, suggested that the term **"Shell Companies"** should be defined under the Income Tax Act or Rules framed there under or the Companies Act and a clear mechanism with proper clarification should be made available for branding any company as "Shell Company" .

INDIRECT TAXES

Goods & Service Tax

1. Exemption (Threshold) Limit May Cover Inter-State Sale also:

Presently, if a Dealer makes even a single Inter-state Sale, he is not entitled to avail the benefit of threshold Limit and Composition Scheme. This impediment can be removed. Whether local Sales or Inter-state Sales, there should be no discrimination. If, in aggregate, the Inter-state & Intra-state turnover is within the threshold Limit, they should be treated as "Small Scale Dealers" and should be entitled to the concessions available to similar Intra- State Dealers.

Moreover, whether it is Supply of goods or Services, they should be in the same footing.

2. Composition Scheme should be extended to Service Providers and for Inter-state Supplies also:

There is no logic why Composition Scheme should be confined to Traders, Manufacturers & Restaurants and denied to Service Providers. By extending Composition Scheme to Service Providers, the Compliance may improve and moreover, the Service Receivers may not get Set- off benefit of the GST on the Services availed. So, from Revenue point of view also, the Govt. may not stand to lose.
As earlier stated, whether it is Inter-State or Intra-State Supply and whether it it is Goods or Services, there should be no differentiation or discrimination, and the Composition Scheme should apply evenly for all.

3. Input Relief should be extended to all Supplies, except Sin Goods & Services:

GST paid on some services like Motor Cab Rentals, Transportation of Passengers, Restaurant Services have been specified as ineligible for Input Relief. It is not known as to what will be greatly achieved by this. The Law should be simple and straight forward with minimum twists & turns, bends and bunds on the road. Just as Input Relief has been rightly extended to Capital Goods and Trading Goods alike, so also any service and any goods (except SIN goods or Services) should in all fairness be made eligible for Input Credit.
Exceptions should be bare minimum, easy to remember and logical to understand.

4. Simplification of GST Returns & Matching/ Reconciliation System:

This probably would be the most vital Area where Simplification of procedures should be of utmost importance, The Tax Payer must be able to file with a smile, but not put into cumbersome and complicated procedures.

4.1. The Dealer must be made to file only a Simple Sales / Supply Statement and Purchase Statement and a Response Statement on Monthly or Quarterly basis. The remaining things (analysis) should be taken care of by the GSTN System.

4.2. The Dealer should be made to fill only the following Information in the Provisional GSTR 1 Return (Sales/ Supply Statement). This Return can be named as GSTR 1 P, with Suffix “P” indicating Provisional Return.

(In fact, the Free Billing Software that can be provided by GSTN, as suggested in Suggestion 3 above, can facilitate this and auto-populate the Data to this Return.)

Presently in GSTR1, the Assessee has to analyse & tabulate his Sales under multifarious heads and fill in the details in the Appropriate Tile/Tab (Worksheet).

a). Invoice-wise details of all
i) Inter-state and Intra-State Sales made to all Registered Persons
ii) Inter-state Supplies made for Invoice Value Exceeding Rs. 250000 made to Unregistered Persons
b) Consolidated Details of all
i) Intra-State supplies made to Unregistered Persons for each rate of tax and
ii) State-wise Inter-state Supplies for Invoice Value upto Rs. 250000 made to Unregistered Dealers for each rate of Tax
c) Debit and Credit Notes, if any, issued during the month for Invoices issued previously.

All the above complications can be removed and a Simple, Single worksheet can make available all the relevant Basic Information. The Analysis part can jolly well be handled by GSTN System.

4.3. Similarly, The Dealer should be asked to furnish in a Simple way, only the following information in the Provisional GSTR2 Return- Purchase Statement. The Figures from the GSTN Software, as suggested in Suggestion 3 can facilitate generation & uploading of this Return.

This Return can be called “ GSTR-2 P”, with “P” indicating “provisional Return”.

a) If Supply is received from a Composition Dealer or Unregistered Person or from a Registered Person within threshold Limit, GST would be NIL.

b)Only for Purchase from Unregistered Dealer, Reverse Charge would apply.

c)For Imports, Separate Serial Numbered Purchase Invoices may be generated and the Format may be suitably modified to enter Customs Duty, IGST & other levies and Particulars, etc.

d)For Reverse Charge Cases, the GSTN system itself can generate the Reverse Charge Demand. In the following month, GSTN itself can generate the Reverse Charge Reversal Credit and compute the Tax Liability accordingly.

5. Matching & Reconciliation by GST Network:

Based on the Provisional GSTR1 & Provisional GSTR2 Returns, GSTN can match the Sales & corresponding Purchase by the Counter-parties, based on their GSTINs and generate the Mismatch Statement and upload / mail it to both the parties. This Statement can be named " GSTRM" to denote GST Returns Mismatch Statement. This Statement can be generated by the 15 of each month. The Concerned Dealers have to mark "Accept/ Reject/ Keep on Hold " for each case and submit by 20 of the month. This Statement can be called "GSTRMR" Statement (Mismatch Response Statement).

Based on this Response Statement, GSTN should generate a Finalised GSTR1 & GSTR2 Statements by the 25 of a Month.

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