POST-BUDGET MEMORANDUM - 2023

DIRECT TAXES
(Including International Taxation)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

POST-BUDGET MEMORANDUM – 2023

A. INTRODUCTION

1.0 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Post-Budget Memorandum to the Government.

1.1 In this memorandum, we have suggested certain amendments to the proposals contained in the Finance Bill, 2023 which would help the Government to achieve the desired objectives.

1.2 We have noted with great satisfaction that the suggestions given by the Committee in the past have been considered very positively. In formulating our suggestions in regard to the Finance Bill 2023, the Direct Taxes Committee of the ICAI have considered in a balanced way, the objectives and rationale of the Government and the practical difficulties/hardships faced by taxpayers and professionals in application of the provisions of the Income-tax Act, 1961. We are confident that the suggestions of the Direct Taxes Committee of ICAI given in this Memorandum shall receive positive consideration.

1.3 In this memorandum, suggestions on the specific clauses of the Finance Bill, 2023 relating to Income-tax Act have been given in detail.

1.4 In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same.

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POST BUDGET MEMORANDUM – 2023

C. Detailed Suggestions

1. Clause 5(c) – Proposed substituted sixth proviso to clause (10D) of the section 10 - Rationalisation of exempt income under life insurance policies – Status quo may be maintained considering premiums paid by assessees is put to good use by insurance companies for overall economic benefit

Section 10(10D) provides for income-tax exemption on the sum received under a life insurance policy, including bonus on such policy. There is a condition that the premium payable for any of the years during the terms of the policy should not exceed ten per cent of the actual capital sum assured. The Finance Bill, 2023 proposes to further amend section 10(10D) so as to tax income from insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above Rs 5,00,000 in a year. Income is proposed to be exempt if received on the death of the insured person. This income shall be taxable under the head "income from other sources". Deduction shall be allowed for premium paid, if such premium has not been claimed as deduction earlier. The proposed provision shall apply for policies issued on or after 01.04.2023. There will not be any change in taxation for polices issued before this date.

Issue

The proposed changes may cause genuine hardship to the individuals who pay life insurance premium to provide risk cover to their family and receive the proceeds on maturity, which have so far been exempt from tax. However, the proposal in the Finance Bill, 2023 bringing a cap of Rs 5,00,000 on premium paid would discourage assessees. Life insurance companies would be affected by these provisions. The cash flow from life insurance premium is used by Insurance Companies to invest further in Mutual Funds, other productive and constructive avenues which leads to the betterment of the economy and eventually improves the GDP of the country.

The life expectancy of people from the country is increasing. Average age of people from India has crossed about 75 years. Therefore, to

take care of living expenses post retirement, middle class population resort to investment in insurance policy. It offers a safe investment avenue while affording protection to the family from risk of demise of the bread winner from the family. Also, the taxpayers investing in such life insurance policies get benefit (maturity amount less premium paid) after a long period of 10/15 years. In receding interest rate regime, in urban area, about Rs 10 to Rs 12 lakh is required to be paid as premium to get adequate life insurance cover.

Moreover, during this tenure, the premiums paid are put to good use by insurance companies that leads to overall economic development of the country. One of the inadvertent consequences of the proposed provisions is that now less number of people would be investing in such policies and insurance companies will be have lesser funds to further invest the same in productive avenues. Accordingly, the said proposals may be reconsidered and status quo may be maintained.

Suggestion:

> ***It is suggested that the proposed amendments in section 10(10D) may be reconsidered, and cap on maximum amount of premium be increased within the range of Rs. 10 lakh to Rs 12 lakh.***

2. Clause 5 & 7 – Section 10(23C) and Section 11 - Depositing back of corpus and repayment of loans or borrowings – Certain hardships to be addressed

Corpus donations invested in modes specified under section 11(5) would be exempt. Hence, application from corpus donation is not treated as application of income. However, amount not so invested as application would be treated as application in the previous year in which the amount is invested back in forms of modes specified u/s 11(5). Likewise, application out of loan or borrowings would not be treated as application. However, the same would be treated as application in the year of repayment to the extent of repayment The Finance Bill, 2023 proposes to amend the relevant provisions of section 10(23C) and section 11 pertaining to treatment of application when depositing back of corpus and repayment of loans or borrowings. It is proposed to provide that application out of corpus or loans or borrowings before 01.04.2021 would not be allowed as application for charitable or religious purposes when such amount is deposited back or invested in to corpus or when the loan or

borrowing is repaid. It is further proposed to provide that if the trust or institution invests or deposits back the amount into corpus or repays the loan within 5 years of application from the corpus or loan, then such investment/depositing back into corpus or repayment of loan will be allowed as application for charitable or religious purposes. It is also proposed to provide that where the application from corpus or loan did not satisfy the conditions as specified, the repayment of loan or investment/depositing back into corpus of such amount will not be treated as application.

Issue

Currently, application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) of section 10 of the Act and clauses (a) and (b) of section 11 of the Act. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment. However, due to the proposed amendments as aforesaid wherein application will be allowed only if the loan is repaid within 5 years and application out of corpus or loans or borrowings before 01.04.2021 would not be allowed as application when reinvested or repaid, as the case may be, would cause certain hardships to the assessees which are detailed hereunder:

(i) Application allowed when loan repaid within 5 years –Most of the loans taken by assessees are from financial institutions and banks for capital purposes like construction of building etc. In such cases, practically, the loans are provided to assessees by banks/FIs for a minimum period of 10/15 years mostly or even longer period of time. Now, in such cases, concerned institutions and trusts will not be able to comply with proposed amendment of paying back the said loans within a period of 5 years and hence would not be able to claim the said loan repayment as application. Accordingly, the proposed payback period of 5 years needs to be duly extended to say at least 10/15 years or more or the term of the loan period as agreed to between the institution/trust and the bank/FI. Most assessees will not be able to comply with the condition of repayment of loan within a period of 5 years and accordingly would be put to undue hardships.

(ii) Application out of corpus or loans or borrowings before 01.04.2021 not allowed as application at the time of repayment – There are a number of institutions and trusts which had taken loans/borrowings before 01.04.2021 but have not claimed the same as application when the said amount is expensed out from the said loan/borrowing, considering that they would claim the same as application at the time such loan/borrowing would be repaid. Such assessees who have not claimed deduction of related expenditure prior to 01.04.2021 would be put to undue hardship due to the proposed amendment. Accordingly, suitable amendment may be made to provide relief to such assessees. Ideally, application needs to be made available to the trust and institution who have taken loan/borrowing before 01.04.2021 and are claiming application at the time of repayment of such loan/borrowing in a situation when no amount has been claimed as application at the time spending money out of that loan/borrowing. A suitable mechanism may be developed to provide appropriate relief in such cases.

(iii) There is an embargo to claim exemption under section 11 of the Act when it is claimed under section 10(23C) of the Act.

It needs to be appreciated that the institution is carrying out useful task that otherwise is responsibility of the Government.

Therefore, artificially the exemption should not be made inaccessible to the institution. If there is technical noncompliance of one provision, then door to enter the other benevolent provision should not be shut.

Suggestions:

> ***It is suggested that proposed amendments in section 10(23C) and section 11 pertaining to depositing back of corpus and repayment of loans or borrowings within a period of 5 years and not permitting application of loans or borrowings taken before 01.04.2021 at the time of repayment of such loan/borrowing may be appropriately modified so as to address the concerns as raised above.***
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> ***Further, choice of either section 10 (23C) or section 11 to 13 may be made available to the institution.***

3. Clause 5 & 8 – Section 10(23C) and Section 12A - Denial of exemption where return of income is not furnished within time u/s 139(4) – Need for alignment of the provisions of section 13(9) and section 139(4A)/(4C) with the amended section 12A and section 13(10) inserted by the Finance Act, 2022

The Finance Bill, 2023 proposes to amend section 10(23C) and section 12A to clarify that the exemption under section 11, 12 and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 will be available only if the return of income has been furnished within the time allowed under sub-section (1) or sub-section (4) of section 139 of the Act. This is being proposed as to plug unintended consequences of allowing exemption under section 11, 12 of the Act and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act being available to the trusts where they furnish updated return of income u/s 139(8A).

Section 13(10) as inserted vide the Finance Act, 2022 provides that where the provisions of section 13(8) are applicable to any trust or institution under the second regime or such trust or institution violates the conditions prescribed under clause (b) or clause (ba) of sub-section (1) of section 12A, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the conditions as specified therein.

Issue

Since benefit under sections 11 and 12 can now be claimed even if an assessee files a belated return u/s 139(4), consequently, section 13(10) permitting revenue expenditure as deduction would now apply in case of returns filed after the time stipulated under section 139(4) i.e., the same would apply where an updated return is filed u/s 139(8A) for the first time (without having filed a return u/s 139(1) or 139(4) earlier) or a return is filed in response to notice u/s 142(1) or 148. This is the interpretation derived from a combined reading of amended section 12A(ba), which provides for extended time limit u/s 139(4) for filing return of income, alongwith section 13(10) inserted by the Finance Act, 2022.

It may be noted that section 13(9) which requires filing of Form 10 before the due date of filing return of income specified under section 139(1) for accumulation of income, has not been amended to include

reference to return of income specified under section 139(4). Also, section 139(4A)/(4C) may require an amendment to give reference therein to section 139(4) also.

Accordingly, there is a need to align the provisions of section 13(9) and section 139(4A)/(4C) with section 13(10) and the proposed amendment in section 12A(1)(ba).

Also, in such a case, the extended time limit for filing of return u/s 139(4) may be provided for availing profit-linked deductions under Chapter VI-A, deduction under section 10AA and carry forward of losses for set-off against income of subsequent years.

Suggestion:

It is suggested that –

- ***The provisions of section 13(9) and section 139(4A)/4(C) may be aligned with the provisions of section 13(10) and the proposed amendment in section 12A(1)(ba).***

- ***The extended time limit under section 139(4) for filing of return may be permitted for availing profit-linked deductions under Chapter VI-A, deduction under section 10AA and for carry forward of losses for set-off against income of subsequent years.***

4. Clause 13 – Section 43B – Amendment proposed to promote timely payments to Micro and Small Enterprises (MSEs) – Certain concerns to be addressed

In order to promote timely payments to micro and small enterprises, the Finance Bill, 2023 proposes to include payments made to such enterprises within the ambit of section 43B of the Act. Accordingly, it is proposed to insert a new clause (h) in section 43B of the Act to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the MSMED Act shall be allowed as deduction only on actual payment. Further, it is also proposed that the proviso to section 43B of the Act permitting an extended period upto due date of filing of return of income for making payments shall not apply to payments to micro and small enterprises. This is a laudable amendment proposed to

promote timely payments to MSEs. However, there are certain concerns that needs to be addressed.

Issue I

Any sum payable to a micro or small enterprise can be for purchase of goods or services. The Proviso to section 43B states that any such expense, which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under section 139(1) in respect of the previous year in which the liability to pay such sum was incurred as aforesaid.

This proviso is sought to be made inapplicable for expenditure resulting payables to Micro and Small enterprises.

For the purpose of this clause, "micro enterprise" has been defined in Explanation 4, that it shall have the meaning assigned to it in section 2(h) of the MSMED Act [clause (e) of the Explanation 4] and "small enterprise" shall have the meaning assigned to it in section 2(m) of the MSMED Act [clause (g) of the Explanation 4]. Accordingly, payments to such 'micro' and 'small' enterprises are subject matter of the newly proposed clause (h) in section 43B.

Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. Thus, the proposed amendment to section 43B of the Act will allow the payment as deduction only on payment basis. It can be allowed on accrual basis only if the payment is within the time mandated under section 15 of the MSMED Act.

Thus, the following aspects appear to emerge from the new proposed clause (h) in Section 43B:

(i) disallowance is applicable for amount payable to micro and small enterprises for purchase of goods or services;

(ii) disallowance is not applicable for amount payable to medium enterprises as defined under the MSMED Act;

(iii) disallowance is not applicable for amount payable in respect of purchase of assets, as deduction is not claimed of such an amount;

(iv) amount disallowed under section 43B(h) shall qualify for deduction in the year in which payment is made, thus, it is not a permanent disallowance.

Hardships requiring amendment and clarity

(i) Consider an example where an assessee purchases a material worth Rs 1 crore from an MSE unit and claims an expenditure, the profit on sale of such material is say Rs 40 lakhs. However, if the payment is not made within the due date under the MSMED Act from the said MSE unit, and also not made by end of the previous year, the same shall be liable to be disallowed (Rs 1 crore and not Rs 40 lakhs) due to applicability of proposed section 43B irrespective of the fact that said payment might be made before the due date of filing the ITR of the said assessee. Even though the assessee would be able to carry forward the said loss for 8 years in case profits are not available in the year in which payment is made to the MSE unit, it would cause unnecessary hardships to him as almost Rs 1.4 crore would be added in his income as payment not made to the MSE unit within the time allowed.

The proposed provisions in section 43B would no doubt encourage payment to MSE units on a timely basis. However, on the other side, it may also discourage purchases from MSE unit due to the application of section 43B in case payment not made with in the due date specified in MSMED Act or before the end of the Previous year whichever is later. It may well be considered that penal provisions are already incorporated in the MSMED Act for non -payment to registered MSE units. Accordingly, the proposed section 43B amendment may add further to the penal actions on the said assessee for non-payment within specified timelines. Some of the corporates and entities who may be purchasing from registered MSE units may reconsider their decision to buy goods/services from them due to proposed applicability of section 43B provisions. Accordingly, the proposed provisions in section 43B needs to be reconsidered. Where assessee sourcing goods or services from micro or small enterprise is unable to make payment before the year end, will find himself liable to huge tax liability. For example, if material of Rs. 1 crore is purchased, where profit is about Rs. 8 lakhs, inability to pay

by the year end, will result in addition in income of Rs. 1.08 crore.

(ii) It will also cause compliance burden as the assessee needs to find out the status of each and every vendor as to whether it is a registered MSE unit or not so that provisions of proposed section 43B may be complied with. Also, Accountant (Section 288) while furnishing audit report (Form 3CA/3CB/3CD) of the said assessee (in case the said assessee is liable to tax audit provisions under Income-tax Act, 1961) needs to do the same exercise of finding MSE units and their payment status before reporting the same in applicable clause of Form 3CD. In most cases, Accountant shall rely on the Management Representations Letters (MRLs) as obtained from the assessee and hence compliance burden on both is increased. It would be an onerous task to carry out such activity/exercise in case of large corporates.

(iii) Typically, issues may arise in respect of provision for certain expenses and fees as at 31st March. Certain services get completed after the year endwhile the bill is issued during the previous year. An issue may arise about allowability of deduction to the assessee who may make provision for such expenses to a professional/service provider who may be registered as a Micro or Small Enterprises under the MSMED Act and also deduct tax at source on such expenses. Services in this case may not be rendered by the end of financial year. Amount is not payable as due in such case as at year end.

It may be appreciated that time limit for payment commences from the day of acceptance or the day of deemed acceptance of any services by a buyer from a supplier [section 2(b) of MSMED Act]. Thus, on the year ending date, the provision cannot be considered as sum payable by the assessee to an MSE (certain specified professional/service provider in the aforesaid case) beyond the time limit specified in section 15 of the MSMED Act.

(iv) Clarification may also be provided w.r.t applicability of proposed section 43B on old payments (More than 1 Year) due for payment to Small and Micro Enterprises. Consider a case where payment is not made on 31.03.2023 to MSE unit and

period under MSMED Act also expired by that date, and payment made on 31.08.2023 and well before the due date of furnishing the return of income of the said assessee which is 31st September, 2023 for AY 2023-24. Now, a question arises whether the said expense to MSE unit would be allowed in AY 2023-24 or AY 2024-25. This may be clarified.

Suggestion:

It is suggested that proposed amendment in section 43B by incorporating sub-clause (h) may be reconsidered. In case, it is clause (h) is decided to be retained, then, the extended date upto due date of filing return of income u/s 139(1) may be permitted for payment to Micro and Small Enterprises also.

Also, a mechanism may be prescribed and a procedure may be prescribed so as to identify whether a vendor is a registered MSE unit as a standard operating procedure that may be followed by all the assessees.

Further, a clarification may be provided in cases like provision of fees and expenses (such professional/service provider being a registered MSE unit) being made at the year end by the assessee and tax deducted at source on the same.

Issue II- Due date for crediting the contribution of employees to the respective fund – Section 36(1)(va) read with Section 2(24)(x)

Section 2(24)(x) of the Act, inter alia defines "Income", to include any sum received by the employer from its employees' as contribution towards certain specified funds. However, deduction for such income are available under section 36(1)(va), provided that the contributions collected by the employer are credited to the respective fund within the due date specified under the relevant legislation of the fund. The employee's contribution credited to the employees account in the relevant fund after the due date specified under section 36(1)(va) are disallowed to the employer. Further, any payments made by the employer after the due date is also NOT allowed as a deduction in the year of payment. This causes undue hardship to the assessee especially during the economic turbulence. Further, the Employer's

contribution made after the due date specified under the relevant social security legislation but deposited within the due date of filing return of income are allowed under the Act by virtue of Section 43B. It may be noted that the statutory laws under the respective contribution schemes have provisions to levy interest, penalty etc. for the delayed payment. Hence, disallowing a genuine business expenditure merely on the ground that it has been paid after relevant due date is not justified. On the subject there have various conflicting judgments. Where Hon'ble Uttarakhand High Court and Hon'ble Delhi High Court have considered the due date under section 36(1)(va) to be read in sync with the due date mentioned in section 43B, Hon'ble Gujarat High Court has given a different view. To remove the hardship caused to the assessee and to reduce avoidable litigations, it is suggested that deduction be allowed on the employee's contribution made before the due date of filing the return of income.

Suggestion:

> ***It is suggested that the due date defined under Explanation to Section 36(1)(va) should be amended and accordingly the due date shall mean the due date for filing return of income under section 139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act. It may also be kept in mind that delay of few days should not debar to claim the actual expenditure under Income-tax law as due interest is already charged under relevant laws.***

5. Clause 20 – Section 45(5A) - Alignment of provisions of section 45(5A) with the TDS provisions of section 194-IC – Need to amend and make consequential amendment in section 49(7)

Section 45(5A) is being proposed to be amended by the Finance Bill, 2023 to deem consideration received by cheque or draft or any other mode as full value of consideration received on transfer of capital asset, being land or building or both, under specified agreement, in addition to the stamp duty value of share of land and building and cash consideration.

Issue

Section 49(7) provides that for the purpose of computing capital gain on subsequent sale of such share of land and building, the cost of acquisition would be the amount which is deemed as the full value of consideration. The amount deemed as full value of consideration, thus, includes the money component also in addition to the stamp duty value of share of land and building. The money component should, however, not be included in the cost of such share of land and building while computing capital gains on its subsequent sale.

Suggestion:

> ***It is suggested that section 49(7) may be amended to provide that for the purpose of computing capital gain on subsequent sale of such share of land and building, cost of acquisition would be only the stamp duty value of share of land and building included in the full value of consideration.***

6. Clause 22 – Section 48 - Prevention of double deduction claimed on interest on borrowed capital for acquiring, renewing or reconstructing a property – Need to include other similar expenses like stamp duty, registration fee etc.

The Finance Bill, 2023 proposes to amend section 48 so as to as to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA. This is being proposed so that double deduction claimed on interest on borrowed capital for acquiring, renewing or reconstructing a property is prevented.

Issue

Deduction is claimed in respect of interest on housing loan under section 24(b) and under section 80EE/80EEA of the Act. As per the proposed amendment by the Finance Bill, 2023, the interest so claimed as deduction under section 24(b) or under Chapter VI-A is not being allowed as cost of acquisition u/s 48 for computing capital gains. However, there are certain other similar expenses which are also sometimes claimed as double deduction, for example, under section 80C, deduction can also be claimed in respect of stamp duty, registration fee paid for the purpose of transfer of house property. At the time of sale/transfer of the same house property, the aforesaid expenses are claimed once again in the cost of acquisition portion.

Accordingly, the proposed amendment in section 48 needs to be further extended to include such other expenses which may also be claimed as deduction twice by the assessee.

Suggestion:

It is suggested that amendment as proposed in section 48 may be further changed so that the amount so claimed as deduction under Chapter VI-A (like stamp duty, registration fee etc) should also not be allowed as cost of acquisition under section 48 for computing capital gains, in addition to disallowance of interest.

7. Clause 32(a) – Clause (viib) of sub section (2) of section 56 - Consideration received in excess of FMV of shares by a Non-Resident to a closely held company in which public are not substantially interested – Status quo may be maintained

Section 56(2)(viib) of the Act, *inter alia*, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'. Rule 11UA of the Income-tax Rules, 1962 provides the formula for computation of the fair market value of unquoted equity shares for the purposes of the Section 56(2)(viib) of the Act.

Clause (viib) to sub section 2 of section 56 was inserted by the Finance Act 2012 to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section is not applicable for consideration (share application money/ share premium) received from non-resident investors.

Finance Bill 2023 proposes to include the consideration received from a non-resident also under the ambit of clause (viib) by removing the phrase 'being a resident' from the said clause which therefore means that consideration received from a non-resident will also attract the above-mentioned provisions.

Issue

Covering non-resident within the ambit of section 56(2)(viib) would adversely affect the inflow of funds from foreign countries. Further, issue of equity or convertible instruments by an Indian company to a non-resident would also attract Valuation Rules under FEMA in addition to the provisions under the Income-tax Act,1961 as it involves the use of foreign currency. It is to be noted that there could be disputes regarding valuation as both FEMA and the Income-tax Act prescribe different methods for share valuation. On one hand, as per Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 (Para 11(1)(b)) of the valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Securities and Exchange Board of India registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company. On the other hand, as per rule 11UA(2) of the Income-tax Rules, 1962; the valuation is to be done as per an asset based valuation rule or shall be determined by a merchant banker as per the Discounted Free Cash Flow method.

While as per FEMA, issue of a capital instrument should not be at any value less than the value derived as per the FEMA rules, it may happen that the Fair Market Value computed as per the Income-tax Act is less than the value as per FEMA, thus, tax will be levied on the excess value which is over and above the fair market value computed as per the Income-tax Act. This may cause hardship to the taxpayer for the purpose of assessment under the Income-tax Act,1961.

This amendment may adversely impact funds inflow into India.

Suggestion:

It is suggested that proposed amendment in section 56(2)(viib) be re-considered in light of the abovementioned reasons.

8. Clause 32(b) - Clause (xii) of sub-section (2) of Section 56 – Taxation of income in the hands of Unit holder from the Business Trust as Income from other Sources

Finance Act, 2014 introduced a special taxation regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT) [commonly referred to as business trusts]. The special regime

was introduced in order to address the challenges of financing and investment in infrastructure. The business trusts invest in special purpose vehicles (SPV) through equity or debt instruments.

Section 115UA of the Income-tax Act, 1961 provides for the taxation of certain specified income like interest, dividend and rental income. While, interest, dividend and rental income have been accorded a pass-through status at the level of business trust and are taxable in the hands of the unit holder, however, in respect of the distributions made by the business trust to its unit holders which are shown as repayment of debt, it is actually an income of unit holder which does not suffer taxation either in the hands of business trust or in the hands of unit holder. Therefore, there is a dual non- taxation of income made by the business trust both in its hands and in the hands of the unit holders. For the above-mentioned purpose, a new clause (xii) in sub-section (2) of section 56 is inserted to tax the income which is not in the nature of income as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act and is not chargeable to tax under section 115UA(2) of the Act and a corresponding insertion of sub-clause (xviic) in section 2(24) of the Act is made to provide that income shall include any sum referred to in section 56(2)(xii) of the Act and a proviso to the said clause to provide that where the sum received by a unit holder from a business trust is for redemption of unit or units held by him, the sum received shall be reduced by the cost of acquisition of the unit or units to the extent such cost does not exceed the sum received.

Issue

There is an issue of characterization of income as the Finance Bill proposes to tax such income as '*Income from other Sources'* under section 56 while this is rightly income falling under the head Capital Gains as it involves appreciation in the value of a capital asset in the hands of unit holder as per the Income-tax Act, 1961. This difference in characterization may also lead to difference in rates of taxation as capital gains are taxable at rates different from rates applicable to income under other sources.

Suggestion:

It is suggested that proposed amendment in section 56(2)(xii) be re-considered in light of the abovesaid reasons.

9. Clause 43 – Section 87A – Increase in rebate amount to assessees opting for taxation under section 115BAC for taxable income upto Rs 7,00,000 – Request to consider providing relief akin to marginal relief to assessees having taxable income exceeding Rs 7,00,000

The Finance Bill 2023 proposes to amend section 87A pertaining to Rebate from Income-tax. It is proposed that from AY 2024-25 onwards, an assessee, being an individual resident in India whose income is chargeable to tax under the proposed sub-section (1A) of section 115BAC, shall now be entitled to a rebate of 100 % of the amount of income-tax payable on a total income not exceeding Rs 7 lakh. It is a welcome move to encourage tax payers to pay taxes honestly after crossing the threshold of Rs 7,00,000 in the new regime of taxation under section 115BAC. The objective as stated by Hon'ble Finance Minister in her budget speech is that the persons in the new tax regime, with income up to Rs 7 lakh will not have to pay any tax.

Issue

The new tax regime proposed in the budget is good and welcome as it will provide more cash flow and liquidity in the hands of the taxpayers. The taxpayers may choose to invest the money or spend the same or partially invest and partially spend the same. No tax on income up to Rs 7 Lakhs is also a welcome step. However, there is a concern for the tax payers having income just above Rs 7 lakhs. As per the proposed new tax regime, once the income goes above Rs 7 lakhs, the rebate of Rs 25,000 will not be available with the result that the tax liability on income of Rs 7,01,000 (after considering Standard Deduction of Rs. 50,000) will come to Rs 26,104 though income above Rs 7 lakhs is just Rs 1,000. Thus, a taxpayer having earned an incremental income of just Rs 1,000 above Rs 7 lakhs will have a tax liability of Rs 26,104. This means, earn Rs 1,000 extra and pay tax of Rs 26,104. This hardship will continue for tax payers having income up to Rs 7,29,000 on which tax liability under new tax regime is Rs 29,016. Thus, between the income of Rs 7,00,000 to Rs 7,29,000, it will be better for a taxpayer to forego the income above Rs 7 lakhs rather than paying tax more than the income earned above Rs 7 lakhs. Accordingly, this anomaly may be addressed by providing marginal relief as is being given while applying increased rate of surcharge. As per the suggested marginal relief, the tax payable shall not exceed the income above Rs 7 lakhs.

So, if income is Rs 7,01,000; the tax payable may be restricted to Rs 1,000 only. If income is Rs 7,15,000, tax payable may be restricted to Rs 15,000 only and so on. Such a situation (without marginal relief as suggested) will incentivize tax evasion practices and incorrect reporting of details in income tax return. It may be appreciated that under the new tax regime, there is no possibility of any adjustment in the taxable income as no exemption and deduction would be available. In such cases, benefit of marginal relief may be extended so that additional tax payable does not exceed additional income earned. This suggested marginal relief will also encourage the taxpayers to report correct income. The suggested Marginal Relief in this regard may be provided while passing the Finance Bill.

Whether the assessee opts for a new tax regime or old tax regime, marginal relief must be given when taxable income is declared above Rs.5 lacs or Rs. 7 lacs. There may be a tendency to reduce the income in any manner up to Rs.5 lacs or Rs. 7 lacs to avoid additional (huge) tax liability because tax rebate u/s 87A is NIL on income exceeding the aforesaid amount(s). Hence, if marginal relief is allowed, it will substantially increase the number of tax payers in the Country besides additional tax revenue to the Government.

Suggestion:

It is suggested that a suitable amendment may be carried out so as to allow some sort of relief akin to marginal relief to the tax payers reporting income exceeding Rs 7,00,000 in the new tax regime such that taxpayer may not have to pay additional tax over and above increase in income above Rs 7,00,000. On similar grounds, it may also be considered to provide marginal relief to assessees opting for old tax regime and reporting income above Rs 5,00,000.

10. Clause 63 - Section 132 - Assistance to authorised officer during search and seizure – Request to consider providing level playing field to the assessees subjected to search operations

The Finance Bill 2023 proposes to amend section 132 to provide that during the course of search the authorised officer, may requisition the services of any other person or entity, as approved by the Principal Chief Commissioner or the Chief Commissioner, the Principal Director General or the Director General, in accordance

with the procedure prescribed by the Board in this regard, to assist him for the purposes of the search. Similarly, during post search enquiries, the authorised officer may make reference to any person or entity or any valuer registered by or under any law for the time being in force, who shall estimate the fair market value of the property in the manner prescribed and submit a report of the estimate to the authorised officer or the Assessing Officer within 60 days from the date of executing the last authorisation of search.

Issue

Section 132 enables the department (to require the service of any police officer or of any officer of the Central Government, In addition of the proposed amendment enables the department requisition the service of any person or entity to assist the officer during the course of the search. However, no relief has been provided to the assessee who is subjected to search and cannot seek help even from its Legal Representative. There is a need to have a level playing field during the course of search operations. Some relief may be provided to the assessee subjected to search i.e. the assessee may be allowed to call his legal counsel during the search operations.

Suggestion:

It is suggested that suitable amendments may be carried out in section 132 so as to allow relief to the assessee subjected to search.

11. Clause 68 – Section 142(2A) – Proposal to prevent permanent deferral of taxes through undervaluation of inventory – Request to mandate 'Registered Valuers' to carry out the task of valuation for the purpose of Income-tax law

The Finance Bill 2023 proposed amendment in section 142(2A) so as to enable the Assessing Officer to direct the assessee to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf. Assessee is then required to furnish the report of inventory valuation in the prescribed form duly signed and verified by such cost accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.

Issue

When the different laws were enacted, there was no separate professional who was recognized as Valuer. Hence, the authority was entrusted to professionals like CA, CMA or Merchant Banker. Now, 'Registered Valuers' specialising in the field of valuation, including valuation of inventory, are available. Therefore, it is more appropriate to specify 'Registered Valuers' to perform valuation of inventory. Valuation professionals are mandated through Statute and hence section 8 Companies have been incorporated by various professional Institutes (eg ICAI RVO) to enroll and regulate registered valuers as its members in accordance with the Companies (Registered Valuers and Valuation) Rules, 2017.

Similar amendments may be made in other provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962 wherein valuation work may be statutorily assigned to 'Registered Valuers'. A case in point is the need to amend Section 56 and Rule 11UA so that valuation may be carried out by *'Registered Valuers'*.

Inventory valuation is a technical matter and there are many methods to value inventory. Further, material quality also has an impact on valuation. A registered valuer had to value the jewellery for the purpose of wealth tax under the repealed Wealth Tax Act, 1957. Therefore, materials are to be valued by an Engineer and not by a Cost Accountant. Accordingly, the proposal may be amended so that the inventory has to be quantified and certified by an Automobile/Mechanical/Chemical engineer and to be valued by a Registered Valuer. The provision also can prescribe the valuation method of either FIFO or Moving weighted average.

The proposed Inventory Audit would take place after a year from the end of relevant Financial Year. The Inventory data is dynamic in nature - more importantly the Work in Progress. It may not be possible to conclude the true and fairness of valuation on the basis of available data at a much later point of time. Secondly, the Inventory build up is a continuous process. WIP of year in question will be Finished Goods of the subsequent year. The endeavour of all legislations is to bring the business practices into organized environment and to ensure sustainability. The ideal situation would be to track the Inventory management practices prospectively so that the assessee would improve the book keeping and keep the things in order. Hence, the Audit by a Cost Accountant and or

Registered Valuer can be ordered for the 3 consecutive years from the year for which the Inventory audit is ordered for. By the time the department takes a call on the inventory value of year 1, the Return of Income for Year 2 also would be due for filing and hence the improved picture of inventory values presentation can be expected from the Tax Payer. The ITD also can be fair to the Taxpayer in drawing conclusions with reference to a particular assessment year's inventory value. The consequent amendment to Section153 also justifies the approach of ITD in judging the value of inventory for a particular year.

Since the scrutiny is a post facto process, what records should be maintained to enable a cost accountant and or the registered valuer to value the stock, may also be notified. If ultimately stock valued by the Registered Valuer shall be considered, it may be made mandatory for assessee above certain threshold to get the valuation certificate.

Suggestion:

It is suggested that proposed amendment in section 142(2A) pertaining to inventory valuation may be assigned to professional experts i.e. 'Registered Valuers'. All valuations under Income-tax Act, 1961 may be statutorily done by 'Registered Valuer'.

12. Clause 90 - Sub-section (1G) of Section 206C - TCS on foreign remittance through Liberalised Remittance Scheme and remittance for Overseas Tour Package

Sub-section (1G) to section 206C introduced by the Finance Act, 2020 provides for a two-pronged levy of TCS.

The first one, being the responsibility on the Authorized Dealer who receives an amount for remittance out of India from a person remitting such amount out of India under the Liberalized Remittance Scheme of the Reserve Bank of India and the second one being on the seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package. The Finance Bill 2023, proposes to increase the rate of TCS applicable on the sale of Overseas Tour Package by an Indian seller and to any case other than for defined educational purposes and medical treatment of outward remittance from 5% to 20%.

The term "Overseas Tour Package" has been defined in the Act to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.

As per the Finance Bill, it is proposed to increase the rate of TCS on sale of Overseas Tour Package and cases of outward remittance other than for defined educational purposes and medical treatment from existing 5% to 20% without any threshold.

Issue

(i) While this move may boost domestic tourism, it would cast an added burden on tour operators who are in the phase of recovery post pandemic.

The stated increase would also result in causing undue hardship to the resident taxpayers in the prevalent global economic scenario which is highly competitive and may ultimately prove counter-productive in many ways. While the intention is to track the transactions by bringing it into the tax net via levy of TCS, care may be taken to encourage that the rates are not too steep posing genuine difficulties.

(ii) Section 206C(1G) provides for TCS on foreign remittance through the Liberalised Remittance Scheme as well. It is also proposed to increase rate of TCS on certain foreign remittances as well. The proposed high rate would keep a check on the fact proper tax has been paid by the said remitter cum assessee. However, at other side, it will cause hardship to assessee who may be remitting money broad for genuine reasons/purposes. The rate of increase in TCS is quite steep. Even otherwise, one of the reason/objective to levy TCS is to keep track of assessees who may be remitting huge amount of money abroad and may not be paying applicable taxes on income. For this purpose, the rate of 5 % would suffice. This steep proposed increase requires a huge amount of money to be paid to the exchequer before remitting money abroad. Eg a father remitting money to his children abroad say of Rs 5 lakhs would have to pay/deposit TCS upfront of an amount of Rs 1 lakh. In this case, in case his tax amount payable on returned income is less than Rs 1 lakh, then it would take

some time before getting a refund. Further, there would be unnecessary hassles in case refund needs to be taken for whole of the amount. The high rate of 20% may be reconsidered and may be made applicable on certain cases of tax evasion by bringing in adequate checks and balances.

Suggestion:

It is suggested that proposed amendment in section 206C(1G) be re-visited in light of the above and the rates of TCS are lowered. The main intent of levy of TCS is to bring such transactions on record and this can be achieved by removing the threshold and levying a lower rate of TCS.

For Non-PAN cases, higher rate of tax as proposed may be implemented but for assessees having PAN, status quo may be maintained.

13. Clause 98(b) – Substituted Section 246 – Proposal to introduce the authority of Joint Commissioner (Appeals) – Request to specify Time Limit for disposing off appeals and related concerns and suggestions

The Finance Bill 2023 proposes to substitute section 246 so as to introduce the authority of Joint Commissioner (Appeals) in order to dispose of the small appeals expeditiously and to lessen the burden on Commissioner (Appeals). Such authority has all powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals.

Issue

(i) A conciliation process was proposed in the Finance Bill 2021, however, as on date, there is no machinery put in place for operationalising the said conciliation process. The said proposal needs to be enacted in letter and spirit and accordingly Rules may be framed for putting the conciliation process as enacted by the Finance Act 2021 at the earliest.

(ii) Further, it needs to be clarified whether there would be any consequential changes in appeals to the next higher authority, i.e. Income Tax Appellate Tribunal, as 2nd appeals may come to Tribunal also once pending cases were cleared in the 1st appellate stage.

Suggestion:

It is suggested that a specific time limit be enacted in the proposed section 246 specifying the time within which appeals would be disposed off by the Joint Commissioner (Appeals).

14. Paragraph A of Part III of the First Schedule to the Finance Bill, 2023 - Surcharge on Income-tax - Need to provide clarification regarding applicable rate of surcharge while calculating tax at maximum marginal rate of tax (MMR) on Association of Person (AOP)

In Paragraph A of Part III of the First Schedule to the Finance Bill, 2023, it is provided that in case of an AOP consisting of only companies as its members, the rate of surcharge on the amount of income-tax shall not exceed 15%.

Issue

As per section 167B, income of an AOP would be chargeable to tax at MMR. If the member is a foreign company chargeable to tax at a rate higher than MMR, the share pertaining to the foreign company would be chargeable at the higher rate. As per section 2(29C), MMR means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income as specified in the Finance Act of that year. From a combined reading of these provisions, it appears that the rate of surcharge to be applied for computing MMR is 15% (and not 37% or 25%, as the case may be). However, in section 2(9) of the Finance Bill, 2023 pertaining to payment of advance tax, in clause (c) pertaining to AOPs consisting of only companies as its members, the surcharge rate of 10% has been specified, where total income > Rs.50 lakhs but < Rs.1 crore; and 15% where total income exceeds Rs.1 crore. Generally, MMR implies application of the highest rate of surcharge, which as per the Finance Bill, 2023 has to be restricted to 15% in case of AOPs where all members are companies. However, the stipulation of different surcharge rates in section 2(9) indicates surcharge has to be applied according to the respective slab for computation of MMR. It may be clarified whether applicable slab rate of surcharge or the highest rate of surcharge has to be considered for computing MMR under different provisions of the Income-tax Act, 1961.

Suggestion:

It is suggested that a suitable clarification may be given as to the manner of application of rate of surcharge for computing MMR to be applied under different provisions of the Act.

15. Section 194LC and 194LD - Extension of the concessional Rate of deduction of tax for this year

As per section 194LC, Where any income by way of interest is payable under a loan agreement or a long term infrastructure bond or is payable to a non-resident, not being a company or to a foreign company by a specified company or a business trust, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five %. The monies borrowed are in foreign currency from a source outside India and before 01.07.2023.

As per section 194LD, any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest by way of investment in Rupee Denominated Bond (RDB) or a government security, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five %. The beneficial rate of five per cent is only applicable if the interest is payable before 01.07.2023.

Issue:

Section 194LC provided for a deduction of tax at a concessional rate of 5% to a non-resident for interest income payable to it by an Indian company or a business trust in respect of monies borrowed by it in foreign currency until 01.07.2023. Furthermore, section 194LD provides for tax deduction in respect of income earned by a non-resident on Rupee denominated bonds and government security. However, such concessional tax rate was available only if interest is payable on such instruments before 30th June, 2023. Since the current Finance Bill does not propose to extend the sunset period available to the non-resident investors, the interest income earned

on such instruments would be taxable at normal rates i.e.20% as specified in section 195. This would negatively impact investments in India from foreign lands and would also expedite sale of such instruments by the non-resident holder to avoid payment of taxes at higher rates.

Suggestion:

It is suggested that in light of the above, to keep the debt market attractive for foreign investors the concessional tax regime be extended.

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