

AMCHAM'S Post Budget Submissions

Country-by-Country Reporting ('CbCR')

Background:

If the consolidated group revenue of an international group exceeds the threshold of INR 55,000 million for FY 2016/ FY 2016-17, CbCR compliance shall be applicable in India.

Where the Ultimate Parent of the international group is filing CbCr in its jurisdiction of tax residence and the Multilateral Convention of Mutual Administrative Assistance for tax matters has been signed up for automatic exchange of information between such country & India, the Indian group entity needs to file intimation (in Form 3CEAC) with the tax authorities of the parent entity which shall be filing the CbCR. Such intimation filing was required to be completed on or before 31 January 2018 for FY 2016-17.

However, any of the constituent entities may file CbCr in India (on or before 31 March 2018) if the parent is resident of a country or territory:

- with which India does not have an agreement for exchange of information; or
- there has been a systemic failure between India and such country.

Currently, India-US information exchange agreement is not signed and we understand that discussions with the US CA are on for exchange of information.

Recommendation:

In absence of a valid exchange agreement by 31 March 2018 between India and US, Indian subsidiaries of US MNE filing the CbCR would also be required to file CbCR in India. MCAA agreement between U.S and India would avoid duplication and facilitate ease of doing business in India.

Corporate tax rates reduction for companies having turnover less than INR 2500 Million

Proposed provision:

- Vide the Finance Bill, 2018, the Finance Minister has proposed to reduce the tax rate to 25 per cent in the case of the companies where the total turnover of the previous year 2016-2017 does not exceed INR 2500 Million.

Recommendation:

- **Many US MNEs present in India have a turnover exceeding the specified threshold limit of INR 2500 Million and hence the benefit of reduced corporate tax rate may not be available to them. Considering the tax rate cut in US tax reforms, the limit on turnover from INR 2500 Million should be increased to extend the benefit and boost 'Make in India' initiative.**

Relaxation in section 80JJAA of the Act

Proposed provision:

- Section 80JJAA Income-tax Act, 1961 ('the Act') is a meaningful incentive provision which provides for an additional deduction of 30% for three years on the salary paid to new employees, subject to satisfaction of certain specified conditions.

- This incentive is mainly aimed at generation of employment by providing additional incentive for employment of new personnel.
- As a measure of rationalisation, an amendment has been proposed vide Finance Bill 2018 whereby it is proposed that for new employee who is employed for less than minimum period (240 Days/ 150 Days) in the first year but employed for minimum period in the second year, shall be deemed to qualify as additional employee for second year.
- The proposed amendment will be effective from AY 2019-20.

Recommendation:

- **Since the proposed amendment appears to overcome the ambiguity which surrounded the interpretation of the section, the proposed amendment appears to be curative in nature and is a welcome step forward.**
- **As the proposed amendment is applicable from April 01, 2018, clarification is required whether the benefit under the proposed law would be applicable for employees hired in FY 2018-19 and onwards.**

E-assessments

Proposed provision:

- With the objective of achieving greater efficiency and transparency and reducing physical interface between the Income tax department and taxpayers, e-assessment provisions were introduced in 2016 on a pilot basis. The Hon'ble Finance Minister of India, during his speech presented for the Union budget 2018, has also proposed to amend the Act to notify a new scheme for assessment where the assessment will be undertaken in electronic mode which will almost eliminate person to person contact with income tax authority.
- In line with the above proposal, the Central Board of Direct Taxes ('CBDT') has issued the Instruction No. 1/2018 dated 12 February 2018 in relation to e-assessment, wherein the details of schemes are outlined.

Recommendation:

- **The government should create a mechanism wherein tax assessment should be performed by industry/ sector specific nodal assessing officers to avoid hardships to the industry and to make e-assessments procedure more objective and effective.**

Levy of interest subsequent to amendments to align the ITA with ICDS notified under section 145(2)

Background and proposed provision:

- Revised ICDS was notified on 29 September 2016 to become applicable with effect from A.Y. 2017-18.
- CBDT issued Circular No. 10/2017 dated 23 March 2017 to clarify implementation issues on ICDS by way of FAQs.
- ICAI released Technical Guide on ICDS in July 2017 for the guidance of taxpayers and Tax Auditors were tasked with responsibility to verify ICDS compliance by taxpayers.

- In a writ petition filed by Chamber of Tax Consultants vs. UOI (2018) (252 Taxman 77), the Delhi HC struck down several provisions of ICDS by holding that ICDS cannot override the law settled by judicial precedents on interpretation of ITA.
- Finance Bill 2018 proposes to carry out retrospective amendments with effect from FY 2016-17 which are intended to regularise ICDS compliance by large number of taxpayers and prevent any further inconvenience to them and to provide certainty in wake of recent judicial precedents on the issue of applicability of the ICDS.

Recommendation:

- **Companies filing revised return of income for incorporating retrospective amendments would be liable for interest liability under section 234B / 234C on the additional tax liability in view of ICDS enactment from FY 2016-17.**
- **It is recommended to allow waiver of interest liability under section 234B/234C for FY 2016-17 on account of ICDS to avoid genuine hardship to the companies.**

PAN for financials transaction for INR 250,000

Proposed provision:

- Finance Bill 2018 proposes to introduce additional clause (v) and clause (vi) to section 139A(1) extending the scope of the persons who are mandated to obtain PAN. The proposed amendment seeks to cover the following persons:
 - Clause (v): Non-individual entities which enter into financial transaction of an amount aggregating to two lakh and fifty thousand rupees or more in a financial year.
 - Clause (vi): Natural persons being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer, office bearer of the person referred to in clause (v) or any person competent to act on behalf of the person referred to in clause (v)

Recommendation:

- **The provisions should be rationalized to provide exemption to non-resident companies which do not have economic presence in India.**

Relief from provisions of section 115JB of the Act

Background and proposed provision:

- Income-tax Law provides for special scheme of taxation for non-residents which are income from specified businesses referred in Section 44B/BB/BBA/BBB. A presumptive rate of gross revenue is deemed to be the taxable income of the foreign / non-resident company.
- Finance Bill 2018 by way of a welcome amendment to Section 115JB clarifies that MAT provisions will not apply to a foreign company, where its total income comprises of profits and gains from business referred to in Section 44B/BB/BBA/BBB and such income has been offered to tax at the rates specified in those sections. This amendment is proposed to be effective with retrospective effect from FY 2000-01.

Recommendation:

- It may be provided that the exemption of MAT should be extended to incidental income (like interest income etc.) earned out of the specified income by the foreign companies.

Increase in Custom Duty on import of parts or components of Automobile

Proposed provision:

- Vide Finance Bill, 2018, the Finance Minister has increased the Basic Custom Duty (BCD) of specified parts / accessories of motor vehicles (classified under 8702 and 8704), motor cars (classified under 8703) and motor cycles (classified under 8711) from existing 7.5% / 10% to 15%.
- The said goods broadly includes –
 - Engines used in automobiles (8407 and 8408) – *BCD increased from 7.5% to 15%*
 - Parts use principally with the engines (8409) - *BCD increased from 7.5% to 15%*
 - Crank shaft for engines of heading 8407 (8483 10 91) - *BCD increased from 7.5% to 15%*
 - Crank shaft for engines of heading 8408 (8483 10 92) - *BCD increased from 7.5% to 15%*
 - Electrical ignition or starting equipment and cut-outs (8511) - *BCD increased from 7.5% to 15%*
 - Other parts and accessories of motorcycles (8714 10) - *BCD increased from 10% to 15%*
- Further, there has also been an increase of 5% in BCD on import of radial tyres used in bus or truck, classified under group 4011 20 10.

Recommendation

- **These measures result in significant increase in the manufacturing cost of the companies, especially which are importing such goods from non-FTA countries, like US / European MNCs, who have recently set up their units in India.**
- **Though the intention of the government is to further foster the nation-wide initiative of 'Make in India', the government may outline long-term road map of localization plan with sufficient lead-time to implement such increased import duty.**
- **The government may also adopt Phased Manufacturing Programme (PMP), which was adopted in promoting indigenous manufacturing of Cellular Mobile Handsets and parts thereof. In the said programme, the import duty on mobile phones has been kept at par with the applicable excise duty on domestic manufacturing, whereas the import of parts / accessories have been made exempt.**
- **Likewise, when the motor vehicles / motor cycles already attract significant import duty, even if imported in CKD form, the parts / components should be kept exempt until the infrastructure for manufacturing / assembling of such vehicles get stabilised in India.**

Time limit for deciding the show cause notices

Proposed provision

- Section 28(9) of Custom Act has been amended vide Finance Bill, 2018 to provide a definite time frame (unlike flexibility provided to the authority earlier) of 6 months or 1 year for deciding the show cause notices, depending upon whether charges of collusion, wilful mis-statement, suppression have been invoked.

- First proviso to said section has also been added to provide that the said time period can be extended only by an officer senior to the proper officer to a further period of 6 months or 1 year respectively.
- Further, second proviso has also been added to provide that if the proper officer fails to determine even within the extended time period, such proceeding shall be deemed to have been concluded.

Recommendation

- **The said amendment may be made effective retrospectively, so that the pending cases can also be decided sooner on basis of this provision.**
- **Similar provision may also be incorporated in respect of Service Tax as well.**

Increase in Custom Duty on import of Lenscare product

Proposed provision

- Vide Finance Bill, 2018, the Finance Ministry has increased the Basic Custom Duty (BCD) on import of Lenscare products (classified under HSN 33079020) from 10% to 20%.

Recommendation

- **Though Lenscare products have been classified under group 3307, which primarily contains consumer items, the said product is a specialised product more of pharmaceutical nature and are used with contact lens classified under 9001. Amendment in Finance Bill, 2018 may be so made so that the custom duty is increased for all products under group 3307 other than lenscare products.**

Increase in Custom Duty on import of Preform

Proposed provision

- As part of Budget announcement, Finance Ministry has increased the Basic Custom Duty (BCD) on import of Preform (made of silica and used in the manufacture of telecommunication grade optical fibres or optical fibre cables) via Entry No. 13 of Notification No. 6/2018 – Customs dated 2nd February, 2018 from 0% to 5% [the said product is classified under Chapter 70].

Recommendation

- **Preform is one of the primary raw material used in manufacture of optical fiber, which is a major component for setting up infrastructure of telecom services. Recently, the government has launched “BharatNet” – a project of national importance which aims to establish a highly scalable network infrastructure, to provide affordable broadband connectivity for all households and institutions, to realise the vision of Digital India. Hence, increasing the manufacturing cost of optical fibres may adversely impact the completion of this project.**
- **The increase in custom duty on import of Preform (a major raw material for manufacture of optical fibre) may be deferred and 0% rate may continue.**
