



AMERICAN CHAMBER OF COMMERCE IN INDIA

PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg
New Delhi - 110016, INDIA Tel : 91-11-2652 5201, Fax : 91-11-2652 5203
Email : amcham@amchamindia.com Website : www.amchamindia.com

December 14th, 2018

Mr. Arun Jaitley
Union Minister of Finance
Government of India
New Delhi

Hon'ble Minister Sir,

AMCHAM's Pre-Budget Memorandum – 2019-20

The fifth budget to be presented by you is under active preparation. AMCHAM India, the apex chamber of the U.S. companies in India, has following inputs for your consideration before the final budget is presented by you. The memorandum covers both direct and indirect taxes.

- 1. Section 9(1)(vi) - Payments made for use of copyrighted article:** As per the definition of Royalty under the Act, consideration received on sale of copyrighted article should be excluded from the definition of 'royalty' under section 9(1)(vi) of the Act.
- 2. Section 14A and Rule 8D - Rationalization of section 14A and rule 8D provisions of Disallowance of expense computed @ 1% of average monthly value of investment could be limited to 0.5%. Further Disallowance under section 14A read with rule 8D should be based on as a percentage of the exempt income derived from the assets acquired out of borrowed funds and not on value of assets. Strategic investments are made purely for business purpose and not with an intention to earn exempt income. Therefore, strategic investments should be kept out of the purview of subject disallowance. Disallowance under section 14A should not be made where there is no exempt income during the previous year.**
- 3. Section 80JJAA - Deduction for employment generation under section 80JJAA of the Act** Emoluments specified under section 80JJAA of the Act is jRs. 25,000. Capping it at Rs. 25,000 will discourage the Industry from creating more jobs. We propose that emoluments should be increased to Rs. 50,000 per month. Condition of minimum working period of 240 days during the previous year for new workmen is very difficult to comply. It is suggested that new workmen joined during the year for less than 240 days should be allowed to carry over in the next year as new workmen. Further, a clarification is required as to whether the deduction under section 80JJAA of the Act is in the nature of standard deduction for Years 1 to 3 based on additional wages paid in Year 1.
- 4. Tax deducted at source ('TDS') on year end provisions entries in books of accounts:** Year-end provisions are made by taxpayers to follow accrual system of accounting bases on best estimates available. Sometimes the payees are not identifiable, however the year-end provisions are made by the taxpayers. Currently tax is required to be deducted on such provisions which leading to excess deduction and deposit of tax, disputes with the vendor. Therefore, we suggest that relief from deduction of tax at source should be given to the payee on payments that are accrued but are not due and represent only a provision made for reporting purpose that are reversed on the first day of the subsequent year. Further, the relief should also be given from deduction of tax at source on payments for which the payees are not identifiable

5. **Section 68 - Scrutiny examination of funds infused by non-residents:** Assessing Officers ('AO') have been utilising the provisions of section 68 for non-resident investors who are compelled to submit many information to AO during the proceedings of Investee companies. Considering the vast reporting requirements are prescribed for non-residents such as section 195(6) reporting, CbCR, TRC, Liaison Office reporting, requirement to quote PAN under section 206AA, reporting under section 285BA under FATCA etc., scope and depth of examination / scrutiny with respect to financial affairs of the non-resident investors needs to be restricted. The authority conducting an in-depth examination of financial affairs relating to source of funds of a non-resident may be senior. Provisions of section 56(2)(viib) and section 68 may be suitably amended.
6. **Section 47(xiiib) - Conversion of company into limited liability partnership ('LLP')** Exemption in case of conversion of a company into LLP is currently restricted due to amendment in Section 47(xiiib) of the Act by the Finance Act 2016 which denies exemption in a case where the company possessed total assets as per books of account exceeding worth Rs. 5 crores in any of the 3 previous years preceding previous year in conversion takes place. Due to such low threshold for tax exemption, most of the companies are not moving to LLP structure. Therefore, the turnover criteria as well as the asset base condition as specified in section 47(xiiib) should be relaxed/rationalized.
7. **Section 115JB - Rationalisation of Minimum Alternate Tax ('MAT') rates** MAT may be withdrawn or significantly modified at the earliest. Alternately you may consider: (i) Reduction in MAT rates to 7.5% of book profit (from current rate of 18.5%) over a period of five years.(ii). Applicability to only those entities which avail specified tax incentives in the normal computation, since with the removal of incentives, the scope for taxable income being lower than the book profits has considerably reduced. The only major difference between the book profits and normal taxable income arises on account of depreciation rates.(iii)Benefit of non-levy of interest under section 234C of the Act be also extended to capital gains included under the MAT profits.
8. **Section 10AA - Sunset clause in section 10AA and exemption of Special Economic Zone ('SEZ') profit from MAT calculation:** (i) In order to encourage exports and generation of employment and thereby contributing to the welfare of the country, sunset clause for units in SEZ should be removed. Time limit for commencement should be extended beyond 2020. (ii) Creation of SEZ reinvestment reserve hampers the ability of an SEZ unit and hence provision of creation of SEZ Reinvestment Reserve be done away with for SEZ Units engaged in manufacturing activities.(iii) It is also recommended enhancing the 100% holiday limit to 10 years from 5 years. (iv) Removing SEZ profit from MAT calculation. It will reduce taxation impact on the companies and leaving profits with the companies for further investment. This will provide significant relief to exporters who are already finding it difficult to sell their products in the wake of a struggling global economy
9. **Explanation 2A of section 9(1)(i) - Implementation of Significant economic presence ('SEP') provisions.** This seems to tax all the transactions including the physical transactions. It should be appropriately clarified that SEP related provisions will apply to digital transactions/ businesses only. Further clarity is required regarding certain terms as 'transaction', 'carried out by non-resident in India' and 'property'. The clarity of the terms will assist the non-resident assessee in interpretation of law and offering income to tax accordingly. (i) Further, a clarification is required, stating that the provisions of SEP would not apply to a transaction which is subject to Equalisation levy ('EL'). (ii) SEP provisions will require tax payer to maintain additional details with respect to

revenue. In this regard, upfront clarity is required with respect to data to be maintained to track active users, revenue from the digital means etc.

10. Provisions related to General Anti Avoidance Rule ('GAAR')

- GAAR provisions should not apply when a tax treaty contains principal purpose test ('PPT')/ Limitation of Benefits ('LOB') clause since if it is left for the income tax department to decide whether the tax treaties sufficiently address the tax avoidance (in the form of PPT/LOB), there could be unintended situation where income tax department would apply both GAAR and PPT/LOB whatever may be the case.
- For the purpose of defining lack of commercial substance for the applicability of GAAR, it is required to elaborate what constitute as substantial commercial purpose and significant effect so that ambiguity can be reduced around the interpretation of the said terms.
- Clarification is required on the word tax benefit as defined under section 102(10) of the Act as it also includes 'reduction of total income' and 'increase in loss'. There is ambiguity as to how tax benefit can be equated with income/loss level.
- A mechanism may be provided whereby instead of the income tax department disregarding the corporate structure, it may be authorised to approach the court in order to decide whether the corporate structure should be disregarded. A clarity on disregarding any corporate structure is required so as to avoid any subjective interpretational difficulties.

The inputs are based on direct industry feedback.

We would sincerely appreciate your indicating a suitable time for us to come for further deliberations.

Awaiting to your response at the earliest convenience and with best regards,



Ranjana Khanna

Director General CEO

American Chamber of Commerce in India

PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi – 110 016

Tel: +91 11 46509414

Cell: +91 81307 16604; +91 88263 36604; +1 202 957 1250

Fax: +91-11-2652

E-mail: ranjana.khanna@amchamindia.com | Website: www.amchamindia.com