

Pre Budget-

Recommendations-2022-23



December 2021





Corporate taxation recommendations

Corporate taxation (1/4)

Non-resident taxation

E-commerce / Digital taxation

- Clarity needed for interplay between Significant Economic Presence (SEP), Equalisation Levy (EQL) and withholding tax provisions
- Taxpayers who have paid both EQL and tax on royalty/ fees for technical services, the EQL paid should be allowed to be adjusted against the income tax liability of the taxpayer, or excess EQL refunded back to taxpayer
- EQL should not be chargeable in cases of intra group services [for e.g., services provided by an overseas group company to the Indian group company, transaction undertaken through email or internal ERP (which is not open to the public), etc.]
- In cases where 'supply of goods or provision of services party or wholly', is carried out online, the same may be considered as online sale of goods and online provision of services and other specified activities expanding the scope of EQL provisions should be deleted (acceptance of offer, placing/acceptance of purchase order, payment of consideration)
- Erstwhile definition of SEP be restored to restrict the applicability of provisions only to transactions carried out through digital modes

Others

- Non-residents not having income taxable in India either under the Act or under the tax treaty, should not be required to file return of income in India
- General Anti Avoidance Rules ('GAAR') should not be applicable in the case where the existing tax treaty contains the Principal Purpose Test or Limitation of Benefit clause
- GAAR provisions should not be applicable to transactions which are subjected to anti abuse provisions of the Multilateral Instrument ('MLI'). Also, it should be clarified that provisions of the MLI should not be resorted to take away the benefit of grandfathering granted in respect of income from transfer of investments made before 1 April 2017

Corporate taxation (2/4)

Business Income

Allowability of CSR Expenditure

- Either the entire amount or an appropriate proportion of CSR expenditure incurred for helping/serving the community/ society/employees during Covid-19 pandemic may be allowed as a deductible expenditure under section 37 of the Income tax Act, 1961 ('Act')

Increase in salary limit for section 80JJAA

- As per Code on Wages, 2019, there will be increase in minimum wages payable and definition of employees will cover managerial and administrative persons as well. Hence, the existing salary limit of INR 25,000/month should be increased in order to widen the scope of deduction under section 80JJAA of the Act

Depreciation on goodwill

- Amendment regarding exclusion of goodwill from the list of depreciable assets should be withdrawn. Alternatively, the amendment should be made with prospective effect from AY 2022-23 (i.e., FY 2021-22 and onwards)

Deduction under section 10AA

- Section 10AA of the Act should be amended to clarify that employees working from a co-working space under the 'work from home policy' implemented by an SEZ unit shall not impact the SEZ unit from claiming the tax holiday benefit under section 10AA of the Act

Education Cess

- Provisions should be notified to provide clarity on tax treatment of education cess

Corporate taxation (3/4)

Tax deducted at source (TDS) and Tax collected at source (TCS)

- It is to be clarified that once a transaction falls within the purview of section 194Q of the Act, the provisions of section 206C(1H) of the Act do not apply, and the seller cannot be considered as an assessee in default for not collecting TCS on such transactions
- Section 194Q of the Act be suitably amended to keep sale transaction relating to any kind of securities (both listed as well as unlisted) outside the ambit of section 194Q of the Act
- In parity with other TDS sections, it may be clarified that the limit of INR 50 lakh is exclusive of GST for section 194Q
- As in the case of TCS provisions [section 206C(1H)] of the Act, non-resident buyer be kept out of purview of section 194Q of the Act
- Exempted category provided in section 206C(1G) and section 206C(1H) of the Act by way of exclusion of certain buyers from the meaning of buyers should also include RBI, exempt statutory corporation, and mutual funds

Corporate taxation (4/4)

Litigation

- NFAC must mandatorily provide the draft assessment order as well along with the Show Cause Notice so that the Assessee has an opportunity to meet all allegations and basis of proposing addition by the department
- Amend the provisions suitably to not adjust demands against pending refund when a formal stay has been granted. In several cases, litigations span over years and adjusting of demands against refunds adversely impacts the working capital requirements of the Company

Others

- In the taxation regime to be introduced for cryptocurrency and central bank digital currencies, clarification should be provided for issues such as classification (capital asset or financial instrument or commodity), head of income, rate of taxation, expenses that can be claimed, disclosure requirements etc.
- Deduction under section 80M of the Act be allowed while computing book profits under section 115JB of the Act
- Enabling provision be added for aggregating and carrying forward the interest expense incurred in the past years (in relation to such investments on which dividend has been earned in later years) and allow the deduction to the extent of permissible caps in subsequent years

Indirect tax recommendations (Customs)

Customs (1/2)

Custom Duty

- **Continuance of Extra Duty Deposit (EDD)** levy under the SVB procedure
- **Valuation under Customs and Transfer Pricing** for transactions between related parties
- **Differential duty deposited till finalization of BoE, IGST credit should be allowed basis TR6 Challan**
- **Refund of Countervailing Duty (CVD) and Special Additional Duty (SAD), paid on pre-GST imports**
- DRI demand notices **for SWS recovery on imported goods subject to nil BCD/ Exempted** from BCD
- Issue clarification to resolve issues faced by **Authorized Economic Operator (AEO) T2** and AEO T3 certificate holders
 - BG waiver for all category of AEO, specially to Tier III holders
 - MRP stickers should be allowed to be pasted in AEO Tier II and III holder's premises
 - Access to consolidated import/export data through ICEGATE should be enabled at the earliest. In the meantime, the same should be available in a report format from customs system on payment of nominal fee
- Introduction of an **Amnesty scheme** for resolution of legacy customs disputes

Customs (2/2)

Custom Duty

Duty concessions:

- Removal of **discrepancies in customs duty rates/ provision of customs duty exemption on telecommunication products** (such as Voice Over Internet Protocol, Switches etc.) in view of conflicting exemption notifications
- Alignment of classification of telecommunication products in line with global best practices
- Unconditional customs duty exemption to all importers on **pharmaceutical and biotechnology sector goods**
- **Customs duty exemption on sterilizers** used in reprocessing of medical devices
- Customs duty exemption on **sight-saving and sight enhancing medical devices**

Transfer pricing recommendations

Transfer Pricing (1/3)

Transfer Pricing

Exemption for filing Form 3CEB for Non-Resident taxpayers not liable to file Income Tax Return

- Section 92E be amended to provide exemption to non-resident Assessee from filing Form 3CEB, where they are exempted under section 115A(5) of the Act from filing tax return in India

Broadening of range for determining arm's length price

- Rule 10CA be modified to replace existing 35th to 65th percentile range with the interquartile range i.e., with the 25th to 75th percentile, to be aligned with global practice

Increase in threshold under safe harbour rules to cover more taxpayers

- The CBDT had vide notification 46 of 2017, reduced the upper threshold of the value of IT and ITES transactions (from INR 500 crores to INR 200 crores) for eligibility of the safe harbour provisions. It is recommended to increase the upper threshold to bring more taxpayers within the ambit of safe harbour provisions

Reduction of penalty under Transfer Pricing

- There are multiple penalties for failure to do TP compliance. These may be reconsidered and may be reduced

Transfer Pricing (2/3)

APA and MAP

Mechanism to allow adjustment for withholding tax to Non-Residents, after conclusion of APA

- The government should consider rationalizing the APA scheme to allow modified tax return filing by the AEs so that they can claim refund if there is an excess withholding tax by the Indian entity

Sharing of compliance audit report of APA agreement by TPO with Assessee and Assessing officer

- Copy of compliance audit report to be shared by TPO to Assessee as well as Assessing Officer, so that when the modified return filed is scrutinized, the AO has an internal report from the TPO validating the amount of the additional income due to the APA terms

Interest u/s 234B may not be levied in case APA is signed

- There is no time limit for completion of APA proceedings and generally it gets delayed due to pendency of cases and/or change in APA officers. This delay increases the burden of interest on taxpayers. It is recommended that interest u/s 234B may not be levied after APA is agreed

TP adjustment for tax holiday unit on cash repatriation under APA, MAP or under section 92CE

- Section 92C(4) prohibits tax exemption on the value of TP adjustments under sections 10A and 10B or 10AA or Chapter VIA
- Intent of the legislature, as per the CBDT Circular 14 of 2001, in inserting section 92C(4) was to restrict tax holiday benefit on TP adjustments as that would only result in tax adjustment without any consequent foreign currency inflow
- Since the very reason for denying tax holiday benefits gets addressed through introduction of section 92CE (secondary adjustment), there is a requirement to revisit Circular 14/2001 of the CBDT and remove the tax holiday benefit stipulation through an amendment in the Act

Transfer Pricing (3/3)

Litigation

Extending Vivaad se Vishwaas (VsV) scheme

- The taxpayers especially with non-material tax demand are considering this scheme for their dispute settlement as the course of litigation involves more time and cost
- To extend the VsV scheme to include demand under protest post Jan 31, 2020

Guidance to TPO for application of appropriate filters for determining ALP

- The TPO do not take into consideration the position taken in various ITAT rulings on quantitative and qualitative filters for selection of comparable companies, especially in IT/ITES services
- Providing guidance to TP officers for application of appropriate filters, on the basis of functional profile of comparable companies, so as to arrive at reasonable arm's length price as well to take into consideration the available judicial ratios on comparable companies specially for issues involving mark-up on IT/ITES

Introducing timeline for completion of CIT(A) proceedings

- It generally takes around 2-3 years or more for at this stage as there is no timeline prescribed in law for completion of proceedings by CIT(A)
- Taxpayers generally pay 20% or higher demand at this stage. Such long pendency increases working capital burden on taxpayers
- Timeline for passing the order by CIT(A) may be introduced

Personal taxation recommendations

Personal taxation (1/2)

Revision in tax rate

- Currently the highest tax rate for an individual is 42.744%. Therefore, to align the individual tax rates with the corporate tax rate it is advisable to lower the tax rate
- Reduce the highest tax rate of 30% to 25% and also increase the threshold limit for the highest tax rate from INR 10 lakh to INR 20 lakh

Work from home : Introduction of additional deduction

- Considering the current pandemic situation, people are working from home in most of instances. However, employees would be incurring additional expenditure like internet charges, electricity charges, cost of furniture etc.
- Therefore, similar to other developed countries like UK, it is recommended that an additional 'Work from Home' allowance of INR 50,000 given by employers to their employees who have been deployed to 'Work from Home' may be exempted from tax

Taxability of Employees stranded in India

- It is recommended that the days where the individuals are stranded in India due to travel restriction should be excluded while determining the residential status and claiming treaty relief for FY 2020-21 and FY 2021-22
- To avoid double taxation and litigation with the lower authorities, it is recommended to provide specific provisions on taxability of salary paid to such individuals working from India for the overseas entity due to travel restriction

Personal taxation (2/2)

Taxation of PF contribution under Section 17(2)(vii)

- It is recommended that there should be specific provision in the Act providing exemption, in respect of contributions/accretions which are already taxed under section 17(2)(vii) at the time of PF withdrawal

Taxability of interest on employee PF contribution

- It is recommended that there should be specific provision in the Act providing clarity as to whether the interest on employee contribution exceeding INR 250,000 is taxable at accrual stage or at the PF withdrawal stage. In case it is taxable at the accrual stage, exemption should be provided in respect of accretion which is already taxed at PF withdrawal
- It is recommended that it should be clarified that the PF trust has no obligation to withhold tax on such interest. Alternatively, it should be specifically mentioned when does the withholding obligation arise i.e. at accrual stage or at the time of withdrawal

Indirect tax recommendations (GST)

GST (1/3)

Input Tax Credit (ITC)

- Relax restriction on availment of **ITC on gifts and samples** as these expenses are incurred in the course of business [Section 17(5)- CGST Act]
- Removal of **interest liability on non-payment by a recipient** within 180 days or interest to be levied after expiry of 180 days [Section 16(2)- CGST Act]
- Extension of **time limit to avail ITC** of the previous Financial Year (FY) and to amend GSTR 1 for the FY to be extended till December of the next FY [Section 16(2)- CGST Act]
- Relaxation from **interest and penal consequences in case IGST is paid to the account of wrong state** [Section 77-CGST Act, r/w Section 19-IGST Act]
- **Disallow cross empowerment of Central and State Government** for undertaking audit/ assessment/ investigation
- Provide **clarification on outstanding issues relating to post-sale discounts** like no requirement to reverse credit in case of discounts extended via commercial credit notes, reimbursement of discounts to not constitute as 'consideration' etc.
- Removal of **restriction on recipient to avail ITC** only once the supplier pays corresponding GST to the Government [Section 16(2)- CGST Act]

GST (2/3)

GST Registrations

- Similar to service providers, do away the requirement for obtaining **mandatory registration for small seller of goods** on online marketplace
- Take steps to **avoid cancellation/ suspension of registration** on frivolous grounds by ground level officers

Other Miscellaneous Issues

- **Time of Supply provisions for reverse charge transactions** to be amended to increase the time limit for discharge of liability from 30/60 days to 90/120 days [Section 12 and 13- CGST Act]
- Allow **ITC of GST on advances**, at the time of payment of GST and reporting of the same in the monthly returns [Section 16- CGST Act]
- Allow issuance of **credit notes in cases of bad debts** and/or amendment requirement in original invoices [Section 34(1)- CGST Act]
- Clarification that **1 percent TCS not applicable on exports transactions** undertaken on e-commerce marketplaces
- Allow **transfer of unutilized ITC of CGST and IGST** from one GST Registration Number (GSTIN) to another GSTIN registered under same PAN

GST (3/3)

Rate rationalization for Covid-19 – Health Care Sector

- Reduction of **GST rate on medical equipment** and devices from 12% to 5%
- Reduction of **GST rate on accessories of surgical equipment and contact lens**, i.e., lens solution from 18% to 12% to align with the primary products
- Extension of **concessional GST rate of 5 percent on hand sanitizers**, including rationalization of its classification
- **Zero rating benefit** for health care industry