

Post - Budget Memorandum 2022 - 23

Direct Tax



American Chamber of Commerce in India

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**AMCHAM Pre-Budget Memorandum
Recommendations for Union Budget 2022-23**

Direct Tax

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Corporate Taxation

SL No	Area of concern	Issues	Recommendation
1	Taxation of Virtual Digital Asset ('VDA')	<ul style="list-style-type: none"> Section 115BBH is proposed to be inserted by Finance Bill, 2022 to provide for taxation of income from the transfer of VDA. In line with the same, Section 194S has been proposed with effect from 1 July 2022 for withholding of tax at 1% on transfer of VDA exceeding specified thresholds. The term VDA as defined under section 2(47A) provides for a wide definition and covers any information or code or number or token generated through cryptographic means or otherwise. While the objective seems to be to cover gains from transfer of Crypto currencies, the manner in which it is currently drafted leads to ambiguity in interpretation on what is covered under VDA. 	<ul style="list-style-type: none"> Given the wide definition of the term VDA it is recommended that appropriate clarifications are issued to bring clarity on the transactions to be covered within the definition of VDA and the assets to be included. Further, If the intent of the provision is merely to tax cryptocurrencies and similar assets, it is recommended that the definition is clarified and restricted accordingly.
2	TDS on perquisites under section 194R	<ul style="list-style-type: none"> Existing provisions of Section 28(iv) of the Act provides for taxability of any benefit or perquisite arising from business or profession under the head 'profits and gains from business or profession'. In line with this provision, Finance Bill, 2022 proposed to insert Section 194R to the Act to withhold tax at 10% on such benefit or perquisite by the payer. For ease in undertaking compliance, it is recommended to issue guidelines and clarifications on certain aspects. 	<ul style="list-style-type: none"> It is recommended to be clarified that the applicability of section 194R to be restricted only to cases where the benefit or perquisite is received as a consideration or quid pro quo, as has been held in various judicial precedents in the context of section 28(iv) of the Act. Accordingly, the cases proposed to be covered within the ambit of Section 194R should be clarified. Specific clarification should be issued that trade discounts, promotional cash/ non-cash incentives, target linked benefits, quantity purchase incentives, monetary incentives issued in course of business, Freebies (such as diaries, pen sets, etc.) are excluded from the ambit of the proposed Section Valuation related aspects with respect to benefit or perquisite should be clarified. FAQs/ use cases for deductors, clarifying applicability of this provision should be issued.

3	Reporting requirement under section 285B	<ul style="list-style-type: none"> • Section 285B of the Act casts a reporting obligation in case of producers of cinematographic film within 30 days of financial year or 30 days of completion of production. It is proposed to widen the scope of reporting by including persons engaged in specified activity within the ambit of section 285B of the Act. • The term specified activity is defined to mean - any event management, documentary production, production of programmes for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf. • Further, the timeline of 30 days as provided under earlier provisions is not provided in the substituted section. 	<p>While the rules relating to the reporting requirement are awaited, it is recommended to prescribe rules which address the following:</p> <ul style="list-style-type: none"> • For simplifying the reporting requirement and to ease compliance, it is recommended to have a reporting requirement per entity per financial year as against each cinematographic film or programme. The time limit for the reporting can be 3 months from the end of the financial year. • For production of TV series involving multiple seasons/episodes, it is requested to clarify the reporting timeline. • The term event management should be read in the context of events related to entertainment sector such as award shows, reality shows, performing arts etc. • In cases where multiple producers are involved, clarification on which producer should comply with the reporting requirement.
4	Scope of Reassessment proceedings	<ul style="list-style-type: none"> • The scope for initiating reassessment proceedings under section 149 has been expanded to cover cases of income escaping assessment is revealed in the form of: <ul style="list-style-type: none"> ○ Expenditure with respect to a transaction/ event or occasion: ○ An entry in books. • The scope of applicability of this amendment must be clarified to bring certainty and avoid litigation. 	<ul style="list-style-type: none"> • The amendments proposed are against the intent of newly introduced reassessment scheme introduced by Finance Act 2021. The changes were made with a view to reduce litigation. • The proposed amendments are ambiguous and can be interpreted to suggest that officer has right to initiate reassessment for 10 years in almost all cases (except where threshold of INR 50 lakhs is not met). Thus, these amendments should be withdrawn. • Income escaping assessment and represented in the form of expenditure should cover only expenses incurred out of undisclosed income and unexplained expenditure. It should not be applied to cases involving disallowance of whole or part of expenditure actually incurred and disclosed. • Income represented by an entry in the books of accounts should be limited to situations where such entry is purported to be not in the nature of income but is considered otherwise by the tax officer. For e.g. credit

			<p>entries which may be treated as income under section 68 of the Act.</p> <ul style="list-style-type: none"> In case, complete withdrawal request is not accepted, an amendment should be made to provide that 'an entry in the books of accounts of the Assessee' in the last clause.
5	Deduction for Corporate Social Responsibility Expense as well as other expenditure incurred on account of the Covid-19 pandemic – Section 37 of the Income Tax Act, 1961 (Act)	<p>There has been no announcement in Budget 2022 for providing tax benefits to corporates who have spent money in helping / serving the community / society which are in the nature of CSR.</p> <p>Further, many companies have incurred expenditure towards the following:</p> <ul style="list-style-type: none"> Vaccination at office premises/ Reimbursement to employees of vaccination costs for himself or his family members / direct payment to hospitals for vaccination to employees and their family member; Vaccination for contract employees / housekeeping and security staff; Provision of medical equipment like oximeter, thermometers, oxygen concentrators, etc. to employees or his family members; Ex-gratia payments to families of employees, contract employees, housekeeping and security staff on the death of the employee (including contract employees, housekeeping and security staff) 	<ul style="list-style-type: none"> It is recommended that either the entire amount or an appropriate proportion of 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 Act. Appropriate reporting in the tax audit report may be considered for this purpose.
6	Changes in provision related to doubling of TDS/TCS rates where the supplier/buyer has not filed tax return	<p>Section 206AA of the Act provides for higher rate of TDS for non-furnishing of PAN. Similarly, section 206CC of the Act provides for higher rate of TCS for non-furnishing of PAN. In the Finance Act, 2021 Section 206AB was introduced to provide for TDS/TCS at much higher rates where tax returns have not been filed for last 2 years by deductee in order to ensure filing of tax returns in cases where sufficient amount of TDS/TCS has been paid. The Budget 2022 has proposed to cut-short this testing period to the immediately preceding 1 year (in place of 2 years).</p>	<p>While the intent of tax administration is understandable, it is bound to cause much heavy burden and confusion at the end of tax deductors as they need to continuously update records related to ITR filing by their suppliers which is a tedious task and shall lead to increased compliance costs to tax deductor.</p> <p>Hence, it is recommended that provisions of Section 206AB of the Act should either be withdrawn, or it should be kept unchanged.</p>

7	No change in provisions related to payment by employer of employee contribution to a fund on or before due date	<p>Clause (24) of section 2 of the Act provides an inclusive definition of the income. Sub-clause (x) to the said clause provide that income to include any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees.</p> <ul style="list-style-type: none"> • In Finance Act 2021, in order to provide certainty, clause (va) of sub-section (1) of section 36 of the Act was amended by inserting another explanation to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the —due date under this clause; and • Further, section 43B of the Act was amended by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the Assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies. 	<p>In view of the above amendment, there are now two very distinct positions under the tax laws related to timely deposit of employer contribution and employee contribution.</p> <p>In respect of employer contribution, covered under Section 43B, the deduction is allowable even if there is delay in deposit, provided the payment is made before due date of filing the tax return for relevant fiscal. However, with the Finance Act 2021, amendment, the position has become extremely penalizing towards any delay in deposit of employee contribution, as this would become taxable and there is no relief.</p> <p>It has been recommended, that while it is appreciated that intent of the new provision is to stress on timely deposit of employee contribution, the penalizing provision could be linked to quantum of delay. To this effect it would have been more advisable to charge penal interest at double rates towards delay in deposit of such contribution. The extant provision comes harshly in case on any non-malicious delay of just couple of days due to any genuine cause at the hands of otherwise regular Assessee. The industry expected requisite amendments in Budget 2022 that would provide reprieve in such genuine cases.</p>
8	Provisions related to TDS on purchase of Goods	<p>There have been new provisions introduced in successive budgets since 2020 that are adding to the compliance burden of Assessee's, and they are struggling to keep with amending their ERPs as well as ramping their compliance structures in order to comply.</p> <p>Under the new provisions introduced in Finance Act 2021 (Sec 194Q), a buyer shall deduct tax@0.1% from payments made for purchase of goods (in excess of INR 50 Lacs in aggregate, during fiscal year) to any seller resident in India. In case the seller does not furnish its PAN, the applicable TDS rate shall be 5%. Further where tax is collectible under sec.206C(1H) of the Income Tax Act, these provisions will continue to apply while TCS provisions will no longer apply.</p>	<p>From a plain reading of the provisions, it seems the govt's intent is to capture transaction level details of purchaser in order to ensure that these cross reference with the income disclosed under tax return of the suppliers. This provision will cause further compliance burden on the purchase assesses and cause issues of reconciliation at the time of tax assessment for supplier.</p> <p>It needs to be appreciated that in today's times of highly digitized transactions and payment flows along with tech-oriented laws like GST, there is already fair amount of transparency available to the transactions which the tax department can always refer and analyse to ensure tax compliance and disclosure of income. Further, there is already sufficient deterrence to cash payments, provided under tax laws and in view of these developments and a continuously evolving ecosystem of digitization allowing fair deal of transactional transparency and cross referencing, the tax</p>

			department need not further add to the compliance burden with provisions that will lead to penal consequences for otherwise compliant assesses and impact ease of doing business.
9	Tax incentives to expand the width of healthcare insurance	There has been no announcement in Budget 2022 related to boosting the healthcare insurance by employers. The current insurance coverage in healthcare is very low in India amongst other similar economies and this results in an astounding 80% private healthcare spends.	The government can provide impetus to growing the employer insurance coverage by encouraging employers of MSME and unorganized sectors to buy health insurance for their employees, through incentives (like tax benefits). At the same time the government should provide tax benefits to Insurers, both Private and Public to provide coverage for home healthcare, telemedicine.

Personal Taxation

SL No	Area of concern	Issues	Recommendation
10	Filing of updated return of income	<ul style="list-style-type: none"> Effective 1 April 2022, an updated return of income can be furnished within two years from the end of the relevant Assessment year regardless of whether a return of income was filed previously or not The clause provides that it is applicable from 1st April 2022. However, it does not specifically mention the assessment year for which this clause is applicable. Based on the above, it can be argued that tax returns of FY 2019-20 (AY 2020-21) can be filed upto 2 years from the end of AY i.e. upto 31st March 23. 	<ul style="list-style-type: none"> It is recommended to provide clarification to provide that the above clause is applicable for tax returns from FY 2019-20 (i.e. AY 2020-21) onwards.
11	Additional deduction of employer contribution to NPS for State Government employees	<ul style="list-style-type: none"> Budget 2022 provide parity between central and state government employees by providing 14% of employer's contribution to NPS as a deduction. However, deduction for private sector employees and public sector employee have remained unchanged at 10% of salary, for their employer's contribution to NPS. 	<ul style="list-style-type: none"> It is recommended that the above additional deduction should also be extended to Private and Public sector employees to be at par with State and Central government employee.

12	<p>Exemption of COVID-19-related medical expenditure and ex-gratia</p>	<ul style="list-style-type: none"> • Budget 2022 proposed that an exemption is provided for: <ul style="list-style-type: none"> ➤ Any sum of money received by an individual, from any person (including the employer) towards COVID-19 medical treatment for self and/or family subject to certain conditions (as may be notified) ➤ Any sum of money received by a member of the family of the deceased employee from the employer (without any limit) on account of COVID-19-related illness within 12 months from the date of death, subject to certain conditions (as may be notified) ➤ Any sum of money received by a member of the family of the deceased individual from other persons up to INR 1 million on account of COVID-19-related illness within 12 months from the date of death, subject to certain conditions (as may be notified) • Press release dated 25th June 2021 provides income-tax exemption to ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of Covid-19 during FY 2019-20 and subsequent years • However, the above press release did not provide conditions of 12 months. 	<p>It is recommended that the 12 months condition should be deleted.</p>
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