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Union Budget 2022-23 Expectations: Corporate

As Finance Minister Nirmala Sitharaman is scheduled to present the Budget for the financial year 2022-23 on 1st February 2022. The expectations from the Indian corporate sector in line with the stability of the Indian economy, positive growth, demand generation, job creation, incentives, lower tax rates etc. Few of them have been summarized below:

1. Concessional Tax Regime

The tax collections have been increasing month on month from the specific service sectors and it may be expected by the service sector to give them the reduced corporate tax rate of 15%which was introduced by the Indian government for new manufacturing entities at present in order to give the a further boost.

2. SFT Reporting for Crypto Exchanges

Since, it is expected that the tax regime for cryptocurrencies could be introduced in this budget, it is also expected that considering the huge volumes of crypto investors and trading in India, crypto exchanges can also be subjected to file SFT reporting for the transactions undertaken by them.

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3. Taxability of Dividend Income under the Head Profits and Gains from Business or Profession

Vide amendment brought by the Finance Act, 2020, a domestic company shall not be liable to pay DDT on the dividend declared, distributed or paid on or after 01-04-2020 and, consequently, such dividend shall be taxable in the hands of shareholders under the head of “Income from Other Sources” as per section 56.

Hence, the taxability of dividend income under the head' business or profession' when it is connected to the business carried on by assessee (for example, dividend received in respect of shares held as stock-in-trade) will still be taxable under other sources and not under the head' business or profession'.

It will be beneficial if a clarity is brought out in the matter in the budget to make the provisions in line with each other.

4. Long-Term Capital Gain Referred to in Section 112A in the Hands of Business Trust

Business Trust enjoys the pass-through status in respect of Dividend received, Interest received and Rental income from real estate properties of REITs, and all other incomes are chargeable to tax in the hands of the business trust. Such other income is taxable under section 115UA at a maximum marginal rate (MMR) (i.e., 42.744%) except the capital gains covered under section 111A and section 112 of the Income-tax act.

Upon insertion on section 112A which relates to tax the income arising from the transfer of a long term capital asset, being a listed equity share or a unit of an equity oriented fund or a unit of a business trust at the rate of 10% on the amount of capital gain in excess of Rs. 100,000.

However, such section has not been inserted in section 115UA making such tax on long-term gains taxable at MMR in hands of trust and not at 10%. The upcoming budget should provide for precision in the provisions.

5. Similarity in the Definition of SPV under Income-tax Act and SEBI's Regulations on REITs and InVITs

With the increasing scope of Real estatement investment trusts (REITs) and Infrastructure investment trusts (InVITs), it is essential that there is resemblance in the provisions under SEBI Regulations and the provisions of the Income-tax Act. The definition under both are different which leads to confusion and loopholes.

The budget should amend the provisions to bring parity in the law.

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The two basic differences in the definition of an SPV are as follows:

- As per SEBI Regulations, SPV can be an Indian company or LLP. However, the Income-tax Act recognises only an Indian company as SPV. Thus, if an SPV is incorporated as LLP then pass-through status shall not be available to business trust in respect of income received from such SPV; and
- As per SEBI Regulations, REIT is not required to have a controlling interest in SPV. However, as per Income-tax Act, REIT should have the controlling interest and at least 50% equity shareholding in SPV.

6. Change in Re-assessment Provisions in line with the New Section 148A

A new section 148A has been inserted under the tax regime in The Finance Act'2021 making a complete change in the assessment proceedings relating to an income escaping assessment and search-related cases.

As per Section 148A made effective from 1st April 2021, the time limit to re-open income tax assessment cases has been reduced to 3 years from 6 years.

Also, in case of serious tax evasion, the assessment can be reopened until 10 years, only when concealment of income is more than Rs. 50 lakhs. Under old provisions, no such monetary cap was applicable.

Further it provides for an opportunity of being heard to the assessee before issuing a notice under section 148.

Furthermore, the CBDT vide notifications extended the timelines for issuing notice under the old provisions of section 148 to 30-04-2021 extending it further to 30-06-2021.

It is the interpretation of law that the delegated authority cannot override the Act by exceeding the authority or making provisions inconsistent with the Act, which created ambiguity and challenges of notices issued under the old provision.

Even though various high courts quashed the notices issued under old Section 148 except Chhattisgarh High Court, it is expected that the budget will clear out the situation and bring necessary curative amendments.

7. Applicability of Presumptive Taxation [Section 44ADA]

The scheme of presumptive taxation was extended to professionals by the introduction of section 44ADA of the income-tax act w.e.f. A.Y. 2017-18. It was made applicable to all assessees, being a resident in India, who is engaged in the profession referred to in sub-section (1) of section 44AA of the income-tax act.

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However, in the memorandum explaining the provisions in the Bill back then, it is clarified that section 44ADA of the Act are applicable only to individual, Hindu Undivided Family and partnership firm, but not a Limited Liability Partnership (LLP). Accordingly, the Bill proposed to amend sub-section (1) of section 44ADA of the income-tax act to provide that the provisions of section 44ADA of the income-tax act shall apply only to an assessee, being an individual, Hindu Undivided Family or a partnership firm, other than a limited liability partnership, who is a resident in India.

However, the Finance Act, 2021 has surprisingly and without any explanation has excluded 'Hindu Undivided Family' from the list of assessee, who would be eligible to opt for the presumptive scheme. An amendment is expected to bring harmony under the tax laws alongside with the increase in limit for section 44ADA of the income-tax act.

8. Scope of Section 115BAB may be Enlarged

Section 115BAB provides concessional tax rate to companies. However, the benefit of reduced tax rate is given to companies engaged solely in the business of manufacturing. It is suggested that section 115BAB(2)(b) may be amended so as to enlarge the activities undertaken by manufacturing companies under it like ancillary trading/job work.

9. Amendment in Section 47(xiiib): Conversion of a private limited or Unlisted Public Company into LLP

Currently, by purview of Section 47(xiiib), no capital gains tax is payable on conversion of a private limited or unlisted public company into LLP subject to certain conditions. One of the condition prescribed in the section is that total sales, turnover or gross receipts in the business of any of the three preceding years shall not exceed INR 60 lakhs. Many companies are now converting themselves to LLP. With a view to popularize the concept of LLP, there should be no threshold on turnover, to avail the benefit under this section.

10. Deduction of Expenditure Incurred for CSR Activities (Section 37)

Presently, expenditure incurred by an assessee on the CSR activities as specified in Section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession and deduction shall not be allowed. As per the Companies Act 2013, it is mandatory for specified companies (as per Section 135) to spend 2% of their average profits towards CSR. These expenses are all connected to social and charitable causes and not for any personal benefit or gain. It is, therefore, fair to allow the same as business expenditure.

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11. Amount Paid for Increase in Authorised Capital (Section 35D)

Currently, amount paid for increase in authorized capital is not allowed as deduction. After a company is incorporated with a minimum paid up capital (for which there is no minimum limit now), and it wishes to increase its authorised capital, the company is required to pay registration fee to Registrar of Companies.

Fee on incorporation of a company is allowed as per specified limits in 5 instalments u/s 35D, however amount paid for increase in authorized capital is not allowed as deduction at all, though the amount is paid to government as a fee. It is suggested that fee paid to Registrar of companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal instalments u/s 35D.

12. Amendment in Section 10(Income that do not form part of total income)

Section 10 of the Act provides exemption to Domestic company under Section 80M of the Act in respect of inter-corporate dividends received. The amount of deduction is limited to the amount which has been further distributed by the company before due date of filing of return for the relevant assessment year. In addition, the dividend income is also liable for tax under Minimum Alternative Tax (MAT).

Hence, there is a need for the amendment in section 10 to provide that a domestic company whose shares are listed on a recognized stock exchange or its subsidiaries shall be granted exemption in respect of any income by way of dividend received from a domestic company which is part of the same group. The same exemption shall also apply to any dividend received from an InVIT set up by the listed company or its subsidiaries as sponsor. This exemption should ensure that relief from cascading taxation is provided under MAT.

13. Depreciation in Case of Slump Sale [Section 32]

The proviso to section 32 provides that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or knowhow, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates. as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned

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between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

Section 32 may be amended to clarify the legal position as to whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale also considering the proviso to section 32 read with section 170 of the Act.

14. Practical Issues in Relation to TDS under Section 206AB

Finance Act 2021 had introduced section 206AB and 206CCA which provides for higher rates for tax for TDS and TCS for a person who has not filed the income tax return in the two preceding years for which the time limit of filing the return u/s 139(1) has expired and the aggregate of TDS and TCS in each of the two years is Rs. 50,000 or more.

Further, to help the taxpayers of TDS and TCS to follow the Compliances of these sections, the Income-tax department has introduced a new "Compliance Check Functionality for Section 206AB and 206CCA". This new tool enables the tax deductors / collectors to verify the specified person. It is expected that this functionality will ease the compliance burden on taxpayers. The utility has been provided with bulk upload facility in case the number of records to be checked are voluminous. However, the number of records that can be checked under bulk upload is restricted to 10,000 cases only.

Thus, this creates a practical difficulty in case of companies having large shareholder or depositor data base as the details are required to be submitted multiple times. Further, it is practically impossible for a listed company to validate the return filing status of shareholders while remitting the dividend, which is generally a very short window after the record date. The turnaround time from declaration time to disbursement time is too short to check DTAA, PAN, Residency; 15G/15H etc due to which additional checking of return filing of lakhs of shareholders would not be feasible.

It is therefore requested to reconsider this restriction and provide additional bandwidth, say one lakh records for upload and checking purpose.

Accordingly, it can be expected that the utility must be updated for taking upload and providing results for larger number of records rather than restricting to 10,000 cases only.

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15. Carry Forward of Accumulated Losses in case of Amalgamation or Demerger u/s 72A of the IT Act, as Applicable for Banks only – to be Extended to NBFC

Amalgamation of banking companies is specifically included in section 72A of the Income-tax Act. Hence, carry forward of accumulated business losses and unabsorbed depreciation of amalgamating banking entity can be claimed by the amalgamated banking entity. However, NBFCs have been kept outside the ambit of such provisions.

Given that the Government has actively implemented consolidation exercise in the Banking and Financial Services including the Mega merger of PSU banks and may adopt similar approach for NBFC Sector, it is recommended that provisions of section 72A of the IT Act are extended to NBFCs also to facilitate consolidation initiatives in this sector.