POST-BUDGET MEMORANDUM - 2019

DIRECT TAXES

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA
NEW DELHI

POST-BUDGET MEMORANDUM – 2019

A. INTRODUCTION

1.0 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Post-Budget Memorandum to the Government.

1.1 In this memorandum, we have suggested certain amendments to the proposals contained in the Finance (No. 2) Bill, 2019 which would help the Government to achieve the desired objectives.

1.2 We have noted with great satisfaction that the suggestions given by the Committee in the past have been considered very positively. In formulating our suggestions in regard to the Finance (No. 2) Bill 2019, the Direct Taxes Committee and Committee on International Taxation of the ICAI have considered in a balanced way, the objectives and rationale of the Government and the practical difficulties/hardships faced by taxpayers and professionals in application of the provisions of the Income-tax Act, 1961. We are confident that the suggestions of the Direct Taxes Committee and Committee on International Taxation of ICAI given in this Memorandum shall receive positive consideration.

1.3 In this memorandum, suggestions on the specific clauses of the Finance (No. 2) Bill, 2019 relating to Income-tax Act have been given in detail.

1.4 In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same.

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C. Detailed Suggestions

1. Clause 25 – Proposed section 80EEA - Tax incentive for affordable housing – Certain concerns to be addressed

In order to promote affordable housing, the Finance (No. 2) Bill, 2019 proposed to introduce a new section 80EEA so as to provide an additional deduction of up to Rs 1,50,000/- for interest paid on loans borrowed up to 31.03.2020 for purchase of an affordable house valued up to Rs 45 lakh.

Issue I:

Request to provide benefit to assessees whose loan were sanctioned after section 80EE deduction was not available i.e. 01.04.2017 and onwards

One of the conditions required to avail the benefit of proposed section 80EEA is that the loan has been sanctioned by a financial institution during the period beginning on 01.04.2019 to 31.03.2020. Further, benefit of section 80EEA is available to assessee, being an individual not eligible to claim deduction under section 80EE. Here, it is pertinent to mention that benefit of section 80EE was available to assessees whose loan had been sanctioned by the financial institution during the period beginning on 01.04.2016 and ending on 31.03.2017. Accordingly, there are a hundred of assessees who may have loan sanctioned after 01.04.2017 but before 31.03.2019 for purchasing a residential house property and fulfilling other conditions as laid down in section 80EE/proposed section 80EEA. Such assessees did not get any income tax benefit in the absence of such a provision income tax law during such period. In order to truelly realise the goal of the current government of 'Housing for All' and 'affordable housing', it may be considered that the proposed provision of section 80EEA pertaining to period of sanctioning of loan may be taken from 01.04.2017 instead of 01.04.2019 i.e. the period when deduction under section 80EE was not available.

***Suggestion*:**

Considering the fact that no additional deduction was available for loans sanctioned during the period 01.04.2017 to 31.03.2019 taken by eligible assessees for purchasing residential house property and satisfying conditions as mentioned in section 80EE/80EEA, it is suggested to make the following change in proposed section 80EEA(3)(i):

*" (i) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, ~~2019~~***2017** *and ending on the 31st day of March, 2020;"*

Issue II:

Clarity regarding benefit to be available for loan taken for construction of residential house property as well

Proposed section 80EEA(1) reads as under:

> *"(1) In computing the total income of an assessee, being an individual not eligible to claim deduction under section 80EE, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of* ***acquisition of a residential house property****." [Emphasis supplied]*

In this regard, Memorandum explaining the Finance Bill provides as follows:

> *"In order to provide an impetus to the 'Housing for all' objective of the Government and to enable the home buyer to have low-cost funds at his disposal, it is proposed to insert a new section 80EEA in the Act so as to provide a deduction in respect of interest up to one lakh fifty thousand rupees on* ***loan taken for residential house property*** *from any financial institution subject to the following conditions:" [Emphasis supplied]*

As can be seen from above, Proposed section 80EEA(1) uses the wordings ***"acquisition of a residential house property"*** whereas in the Memorandum explaining the Finance Bill, the term used is ***"loan taken for residential house property"***. In the larger interest of small tax payers, the wordings in the proposed

section 80EEA(1) may be modified from "acquisition of a residential house property" to "acquisition ***or construction*** of residential property". There may be a case where assessee owns a land and desires to construct a house and loan is taken for construction of that house. In the absence of clarity, there may be litigations/issues on plain interpretation of language used in the proposed section 80EEA(1) w.r.t. availability of benefit on interest payable on loan taken for construction of residential house property. It is pertinent to mention here that section 54 and 54F quite clearly uses the term 'construction' along with the term 'purchase' of a residential house property.

***Suggestion*:**

Accordingly, it is suggested that proposed section 80EEA(1) may be amended as follows (by inserting the words 'or construction' akin to provisions of section 54 and 54F):

> *"(1) In computing the total income of an assessee, being an individual not eligible to claim deduction under section 80EE, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition* **or construction** *of a residential house property."*

Issue III:

Request to raise the value of residential house property from Rs 45 lakhs to a reasonable amount so that additional deduction of Rs 1.5 lakh may be claimed

In order to avail the benefit of this section, one of the conditions prescribed is that the stamp duty value of residential house property does not exceed Rs 45 lakhs. Let's take a case where the actual cost of acquisition of residential house property on which loan is taken from Financial Institution (FI) is Rs.40.00 lakh. Normally, FI finances 75% to 80% of cost of property. In the given case, the loan amount would be say approx. Rs.30.00 lakh. As per the prevailing rate of interest on housing finance (presuming it to be under 9%), interest even in the first year would not be more than Rs. 3.00 lakh. If assessee consumes interest of Rs. 2.00 lakh under section 24(b), the maximum limit/benefit in the proposed section remains unutilized.

Under such circumstances, in order to pass on the real benefit of Rs. 1.50 lakh additional deduction, the limit of Rs.45.00 lakh may reasonably be modified.

It may be noted that even otherwise, limit of allowable interest u/s section 80EE (though applicable for loan sanctioned during the financial year 2016-17) is increased from Rs. 50,000/- to Rs. 1,50,000/-, corresponding limit of value of residential property is reduced from Rs. 50 lakh to Rs.45 lakh which seems to be unjustifiable.

Further, instead of stamp duty value as used in proposed section 80EEA(3)(ii), it should be actual acquisition cost or cost of construction as stamp duty value in many circumstances is much more than actual value. To quote an example, if the layout is on main road and it has few flats on main road and some are on fifth or sixth lane. The stamp duty valuation of entire layout is same whereas actual valuation may differ because of so many circumstances such as house is having two roads; it is near garden of society, floor location etc. Also, section 80EE refers to the 'value of residential house property' and not 'stamp duty value'.

***Suggestion* :**

In view of above, it is suggested that limit of Rs 45 lakh as the value of residential house property may be raised appropriately. (say to Rs 55 lakhs). Further, akin to section 80EE, proposed section 80EEA(3)(ii) may be amended to do away with the term 'stamp duty value'. In other words, the following change may be made in proposed section 80EEA(3)(ii):

"(ii) the ~~stamp duty~~ value of residential house property does not exceed ~~forty five~~ ***fifty-five*** lakh rupees;**"**

Issue IV:

Condition of not owning any residential house not in line with the provisions of section 54 and 23

One of the conditions to avail benefit of proposed section 80EEA is that the assessee does not own any residential house property on the date of sanction of loan. It implies that house property for which loan is taken should be the first house property of the assessee. This condition is contrary to the provisions of section 54 and 23 of the Income-tax Act, 1961 which allows the beneficial

provisions specified therein to assessees owning two house properties. In the Interim Budget presented on 01.02.2019, the Finance Act 2019 amended section 23 so that the assessee can claim two house properties as self-occupied for the purpose of calculating the annual value u/s 23(2) under the head 'Income from house property'.

Even under the head 'income from capital gains', the assessee can opt for 2 residential houses of upto Rs 2 crores for reinvestment purposes (u/s 54) while calculating taxable capital gains.

Accordingly, the aforesaid condition attached to the proposed section 80EEA makes the assessee ineligible to claim the interest under this section if he owns any other house on the date of sanction of the loan.

Suggestion(s):

It is suggested that proposed section 80EEA(3)(iii) may be appropriately amended so as to make it in line with the provisions of section 23 and 54 i.e following change may be made:

"(iii) the assessee does not own ~~any~~ **more than one** *residential house property on the date of sanction of loan."*

2. Clause 25 – Proposed section 80EEB - Tax incentive for electric vehicles/Deduction in respect of purchase of electric vehicle – In advertent error pertaining to condition of owning no electric vehicle may be inserted in the Finance (No. 2) Bill, 2019

With a view to improve environment and to reduce vehicular pollution, the Finance (No. 2) Bill, 2019 proposes to insert a new section 80EEB so as to provide an additional income tax deduction of Rs 1.5 lakh on the interest paid on loans taken to purchase electric vehicles.

Issue:

As per Explanatory Memorandum, in order to avail the benefit of the proposed deductions, one of the conditions specified is that the assessee does not own any other electric vehicle on the date of sanction of loan. However, this condition is not there in the proposed section 80EEB at clause 25 in the Finance (No. 2) Bill, 2019. This condition is in line with a similar condition of not owning any other house property on the date of sanction of loan as per proposed section 80EEA.

***Suggestion*:**

It is suggested that proposed section 80EEB may be suitably amended so as to incorporate the condition of not owning any other electric vehicle at the time of sanction of loan as envisaged in the Explanatory Memorandum.

3. Clause 36 - Section 115QA – Tax on income distributed to shareholder in case of listed companies – Practical difficulties to be faced by listed companies for calculation of proposed tax/distributed income

The Finance (No. 2) Bill, 2019 proposed to amend section 115QA so that any buy back of shares from a shareholder by a company listed on recognised stock exchange, on or after 05.07.2019, shall also be covered by the provision of section 115QA. However, certain concerns to be faced by listed companies w.r.t. calculation of tax u/s 115QA is enlisted below.

Issue I:

Need for notification of new rules or amendment in existing rule 40BB

"Distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the manner as prescribed in in Rule 40BB of the Income-tax Rules, 1962. However, since section 115QA is till date applicable to unlisted companies only, accordingly existing Rule 40BB covers situations from the perspective of unlisted company only. In other

words, distributed income means the buy-back price less amount actually received by the company. In case of offer for sale kind of an IPO, the share price would have been received by the shareholders and not the company. Further, shares of a listed company is only in dematerialised form and not in paper/physical form unlike an unlisted company, hence in situations like multiple allotments/transfer of shares/rights issue etc., it would be difficult to calculate the distributed income as per existing rule 40BB. Existing Rule 40BB needs appropriate amendments or new rule may need to be notified which may provide clarity in calculation of distributed income.

Suggestion:

It is suggested that in view of the proposed amendment in section 115QA extending its scope to listed companies, existing rule 40BB of the Income-tax Rules, 1962 needs appropriate amendments or alternatively, new rule needs to be notified in order to cover various situations peculiar to listed companies thereby providing clarity in calculation of distributed income.

Issue II:

Concern of listed companies who announced the buyback before 05.07.2019 but not completed buyback by that date

The proposed amendment to tax buy back in hands of listed companies is being made applicable w.e.f. 05.07.2019. There may be certain listed companies who may have announced the buyback of shares prior to 05.07.2019 and not completed the buyback by the said date would now be burdened with additional tax liability @ 20% due to amendment announced on 05.07.2019. Hence, such companies may now need to pay tax @ 20% u/s 115QA. Such companies would not have taken into account the tax liability and their financials would be impacted. As a relief measure and to implement the proposed amendment prospectively, listed companies who have announced buyback of shares prior to 05.07.2019 may be exempted.

Suggestion:

It is suggested that companies who have announced buyback of shares prior to 05.07.2019 and have completed the same after said date may be exempted from the provisions of section 115QA considering the prospective implementation of amendment.

4. Clause 39(b) – Proposed seventh proviso to section 139(1) – Mandatory furnishing of return of income - Deposit amount exceeding one crore rupees in current account may be made applicable to all types of accounts

The Finance (No. 2) Bill, 2019 proposes to amend section 139(1) by inserting a proviso so as to specify certain high value transactions wherein ITR filing is being made mandatory. One of the transactions specified is if during the previous year, assessee has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank.

Issue I: Scope to be enlarged

As all current accounts maintained with the banks are PAN based i.e. PAN is one of the mandatory KYC docs for opening a current account with a bank, so transactions in such current accounts can easily be tracked. There is a case to extend the scope of aforesaid specified transaction from deposit in a current account to all the accounts maintained with the bank i.e be it saving account or any other account. This will better serve the intent of the government to make mandatory filing of ITRs involving high value transactions. Further, the aforesaid proposed high value transaction is limited to current account maintained with a banking company or a co-operative bank. It is better if the account maintained with a co-operative society engaged in carrying on the business of banking as well as a post office also gets covered here. This will also align with the proposed provisions of section 194N.

Suggestions:

It is suggested that scope of proposed clause (i) of seventh proviso to section 139(1) pertaining to deposit exceeding Rs 1 crore may be extended to include:

(a) all types of account maintained with specified authorities i.e saving account etc (along with current account), and

(b) deposits made in accounts maintained with a co-operative society engaged in carrying on the business of banking as well as a post office (apart from a banking company or a co-operative bank) within its ambit to align with provisions of proposed section 194N.

Issue II: The term 'expenditure' may be replaced with term 'payment'

Clause (ii) and (iii) of proposed seventh proviso to section 139(1) reads as follows:

> *"(ii) has incurred* ***expenditure*** *of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or*
> *(iii) has incurred* ***expenditure*** *of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or" [emphasis supplied]*

The term 'expenditure' may not convey the meaning intended for due to the following two reasons:

(a) Incurring expenditure normally connote a 'business' expenditure and may not cover apply to non-business expenditure although intention is quite clear that expenditure of foreign travel and electricity consumption may be for any purpose including personal.

(b) Suppose, parents of assessee 'X' has gone for foreign air travel and payment thereof made by 'X'. Now the expenditure is being incurred by the parents but is being paid by 'X". The purpose is to get ITR filed by 'X' and not by his parents.

Suggestions:

*It is suggested that the term '**expenditure'** as used in clause (ii) and (iii) of proposed seventh proviso to section 139(1) may be changed to the term **'payment'** so as to better convey the intent of the proposed amendment.*

5. Clause 44 – Section 194DA - TDS on non exempt portion of life insurance pay-out on net basis – Concerns w.r.t. terms used like 'income' and 'therein'

Section 194DA is proposed to be amended so as to provide for tax deduction at source at the rate of five per cent. on income component of the sum paid by the person. The relevant extract of the section 194DA (after the proposed amendment) is as follows:

> "*Any person responsible for paying to a resident any sum under a life insurance policy, including the sum allocated by way of bonus on such policy, other than the amount not includible in the total income under clause (10D) of section 10, shall, at the time of payment thereof, deduct income-tax thereon at the rate of ~~one per cent~~* ***five per cent on the amount of income comprised therein***"

Issue:

As can be seen from above, prior to amendment proposed, the existing provisions is "deduct income-tax ***thereon*** at the rate of one per cent". The word 'thereon' signifies the amount on which the tax at source needs to be deducted.

However, as proposed, the language used is deduct income-tax ***thereon*** at the rate of ~~one per cent~~ **five per cent on the amount of income comprised therein**.

The word '***thereon***' is still retained in the section 194DA even after the proposed amendment. In order to avoid interpretation issues, ideally, the term 'thereon' may be omitted.

Further, the term ***"income"*** may be defined by way of explanation in section 194DA itself; otherwise, it may create interpretation issues just like section 194C where term 'income' is used currently.

Although, the intent is quite clear from the Explanatory Memorandum, but in order to avoid any possible litigation, the same may be provided in the section 194DA itself.

Suggestions:

It is suggested that:

a) the term 'income' as used in section 194DA may be defined therein by way of an explanation so as to avoid any interpretational issue.

b) the term ' thereon' may be omitted from section 194DA for simplification purposes.

6. Clause 46 – Section 194N – Practical difficulties to be faced and clarifications required regarding implementation of proposed provision of TDS @ 2% on cash withdrawals exceeding Rs 1,00,00,000

The Finance (No. 2) Bill, 2019 proposes to introduce a new section 194N in order to discourage cash transactions by levying TDS @ 2% on cash withdrawals exceeding Rs 1 crore from banks including co-operative banks or post offices subject to certain exceptions as provided therein. There are certain concerns with regard to implementation of proposed provisions which needs to be addressed before its enactment.

Issue I:

Minor inconsistency between budget speech and finance bill

We refer to para 126 of the budget speech (relevant extract reproduced below):

"To promote digital payments further, I propose to take a slew of measures. To discourage the practice of ***making business***

> ***payments*** *in cash, I propose to levy TDS of 2% on cash withdrawal exceeding ` 1 crore in a year from a bank account."* [emphasis supplied]

The Hon'ble FM referred to discouraging 'business' payments in cash while introducing proposed provisions of section 194N. Payments for business are usually made from 'current account' maintained with banks. However, the text of the section 194N as per Finance (No. 2) Bill, 2019 proposes to levy TDS on withdrawal from all types of accounts, be it current or saving or any other account maintained with the specified authority. The inconsistency between budget speech and the finance bill needs clarification.

Suggestion:

> *It is suggested that the intent expressed in the budget speech w.r.t discouraging making of* ***business*** *payments in cash for introducing section 194N may be suitably incorporated in the text of section 194N i.e. withdrawals from only current account may be taken into account for TDS purposes. This will also align with proposed provisions of seventh proviso to section 139(1) (mandatory ITR filing for deposits exceeding Rs 1 crore in current account).*

Issue II:

Need to make consequential amendments/ clarifications w.r.t. claiming of credit of TDS matching with income offered for tax

Currently, no provision is proposed for claiming refund of tax deducted u/s 194N i.e. no consequential amendment is proposed in section 199(3) in order to enable the assessee to claim TDS Credit since cash withdrawal can never be offered for tax as income nor there is any such amendment in definition of income to include such cash withdrawals as income. There can be various genuine cases of cash withdrawals in excess of specified threshold and AO cannot deny credit of TDS in absence of any amendment in section 199(3). Further, while filing ITR, under TDS Schedule, when TDS under section 194N is claimed as credit, there will be concerns for the assessee w.r.t. choosing the head of income in which the cash withdrawal has been offered for tax purposes. As per section 199

read with rule 37BA of the Income-tax Rules 1962, credit for tax withheld can be claimed only in the year in which such income is assessable/offered for tax. Tax deducted shall be deemed to be income as per section 198.

Suggestion

Considering above, it is suggested to make suitable amendment in relevant provisions or to issue clarification on mode of claiming refund may be given in the absence of any corresponding income in relation to cash withdrawal.

Issue III:

Term 'recipient' may not convey the right meaning

Relevant extract of section 194N reads as under:

"*Every person, being,—*
(i) a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);
(ii) a co-operative society engaged in carrying on the business of banking; or
(iii) a post office,

who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, ***to any person (herein referred to as the recipient)*** *from an* ***account maintained by the recipient*** *with it shall, at the time of payment of such sum, deduct an amount equal to two per cent. of sum exceeding one crore rupees, as income-tax:*" [emphasis supplied]

Referring to the term 'recipient' as used above, it may be noted that the said term is not defined anywhere. Also, reference to 'any person' is restricted to the 'recipient'. It is stated that the account is to be maintained by the recipient. It may be possible that the 'recipient' and the 'account holder' are two different persons. However, the intent of the amendment seems to identify 'recipient' as an account holder. If it is so, then if a person other than account holder withdraws amount; will this section be not applicable, or TDS would be levied, needs to be clarified.

Further, it is not clear whether the word 'account' will include all the account maintained with a particular bank or a single account maintained with that particular bank. Clarity is required for determination of amount for deduction of appropriate tax @ 2%.

Suggestions:

It is suggested that the term 'recipient' may not be required in proposed section 194N and hence, following change may be made:

> *"who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, to any person ~~(herein referred to as the recipient)~~ from an account maintained ~~by the recipient~~ with it shall, at the time of payment of such sum, deduct an amount equal to two per cent. of sum exceeding one crore rupees, as income-tax"*

Further, it may be clarified that whether the term 'account' will include all the account maintained with a particular bank or a single account maintained with that particular bank

7. Clause 65 – Section 276CC – Proposed amendment w.r.t. clarification regarding inclusion of amount of advance tax paid and tax collected at source may be made applicable with retrospective effect

Section 276CC is proposed to be amended so as to make the legislative intent clear and to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability.

The aforesaid amendment is proposed to be made applicable w.e.f. 01.04.2020.

Issue:

Since it is a clarificatory amendment as is clear from the Explanatory Memorandum, it should ideally be made applicable

from a retrospective date so as to provide the benefit of clarification made to existing cases that are going on.

Suggestions:

It is suggested that the amendment proposed in section 276CC w.r.t. calculation of tax payable to be determined after reducing tax collected at source and self-assessment tax be made applicable from a retrospective date being in the nature of clarification.

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