STAKEHOLDER CONSULTATIONS WITH HON'BLE REVENUE SECRETARY AND HON'BLE CBDT MEMBER AT MUMBAI

Key issues for discussion

31 May 2024

Policy objective	Specific measures
• Fiscal incentive for "Make in India" and facilitating business reorganisation	• Extending sunset date of s.115BAB for concessional tax rate for new manufacturing companies to 31 March 2026 • Sec 72A: Extend benefit of loss transition on merger to service sector
• Improving "Ease of doing business" in India	• Simplification of domestic TDS / TCS regime • Reduce compliance burden for industry on TDS/TCS on purchase/sale of goods • Address implementation issues for TDS on business perquisites (S.194R) w.r.t bad debts, free samples, secondary discounts, bonus/rights issue by closely held companies • Notify bonafide cases to which anti-abuse provisions of s.56(2)(x) and s.50CA will not apply
• Improving tax certainty	• Provide relief from unintended hardship created by Hon'ble SC ruling in Nestle's case on MFN clause • Restrict reassessment time limit for non-search/survey cases to 3 years from end of assessment year
• Improving dispute resolution and tax administration	• Improve interface with CPC • Timely disposal of rectification petitions and orders giving effect to appellate orders • Expeditious disposal of pending appeals before CIT(A) • Capacity expansion for APA, making BAR and DRC functional

Sec 115BAB – new manufacturing companies : Extend sun-set date to 31 March 2026

Issue	Recommendation with brief rationale
• While the Government did consider industry representations in the past Budgets to extend the sun-set date to 31 March 2024, no further extension was provided in the Interim Budget of February 2024 to further extend the sunset date to 31 March 2026 • While the sunset for IFSC incentives (s.10(4D), s.10(4F), s.80LA) or new start ups (s.80IAC), investment by sovereign wealth fund in infrastructure sector (s.10(23FE)) was extended till 31 March 2025 in the Interim Budget of Feb 2024, the sunset date of s.115BAB was not extended. • Given the volatile and uncertain global macroeconomic factors arising from Russia-Ukraine war, Israel's military action in Gaza and recessionary trends creeping in major developed countries like UK, China, Japan, etc, it is necessary to maintain attractiveness of India for setting up new manufacturing units mainly to promote exports and provide alternative to other manufacturing hubs like China and Taiwan. A further extension of sunset date till 31 March 2026 will enable India to remain attractive for making fresh capital investment, provide boost to domestic economy and also encourage exports.	• The sunset date for commencement of manufacture should be extended to 31 March 2025 considering the current volatile global macro economic factors and need for India to maintain attractiveness for making investment

Sec 72A: Extend benefit of loss transition on merger to service sector

Issue	Recommendation with brief rationale
• Provisions of section 72A of the Income tax Act permit carry forward of loss and accumulated depreciation in case of amalgamation only to certain specific types of companies such as those owning an industrial undertaking, banking companies, etc. • Companies in the service sector like IT/ITeS or E-Commerce or organized retail sector are generally not eligible for such benefits. • With the advent of globalization and liberalization resulting in the influx of foreign entities into India, the increasing competition has resulted in a pressing need for small companies in the service and organised retail to consolidate their resources to survive. • There are safeguards to ensure continuity of business in case of manufacturing sector in terms of achieving production of 50% of installed capacity and maintenance of 75% of assets post-merger. It is true such safeguards may not be feasible for service/ Organised retail sector but other safeguards like continuity of headcount (number of employees) can be considered.	• The benefit of carry forward and set off of accumulated loss and unabsorbed depreciation prescribed u/s. 72A may be extended to service and organised retail sectors. • Proper safeguards can be put in place to ensure continuity of business based on headcount of employees pre and post-merger.

Subject	Recommendation with brief rationale
Simplification of TDS / TCS provisions	The entire gamut of domestic TDS / TCS regime with 33 different provisions with rates varying from 0.1% to 30% needs a relook with an aim of meeting the following objectives: • Simplifying the overall TDS / TCS compliance • Avoiding cash flow blockage for the industry and cost by way of interest on refunds for the Government • Reducing the overlap between TDS / TCS provisions • Bringing in parity in rates and restricting it to say two or three rates only as follows :-

a)	Salary	Normal slab rates
b)	Lotteries, online games and horse race winnings	30%
c)	All existing TDS sections that provide for TDS rate of <5%	Existing rates (<5%) or uniform rate of 1-2%
d)	All other payments	2%-4%

Reduce compliance burden for industry on TDS/TCS on purchase/sale of goods

Subject	Recommendation with brief rationale
• TDS u/s 194Q and TCS u/s 206C(1H) – purchase and sale of goods	• Government's intent to widen and deepen the tax base is well appreciated. • However, the industry perceives the TDS/TCS on purchase and sale of goods to be onerous compliance burden. • The entities with threshold limits of Rs. 10 Cr turnover and/or Rs. 50 lakhs transaction value are already within GST regime and relevant information is populated in Form 26AS from GST returns. • The provisions be made applicable only to payees or payers who are not registered with GST. This will then align with the Government's intention of widening and deepening the tax net. • Alternatively, instead of TDS/TCS, the purchasers/sellers may be required to file Annual Information Returns which will avoid interest, penalty, disallowance u/s. 40(a)(ia) and prosecution consequences for TDS/TCS default. • Also, in view of divergence between definition of 'goods' under Sale of Goods Act and GST law, 'goods' may be defined precisely with exclusion for items like shares, securities, foreign currency and actionable claims.

Address implementation issues for TDS on business perquisites (S.194R)

Issue	Recommendation with brief rationale
• FAQ 1 of Circular No. 12/2022 states that S. 194R applies to a benefit or perquisite irrespective of whether such benefit is chargeable to tax. It suggests that S.194R can apply even where the benefit is taxable u/s. 41(1) of ITA. • If FAQ 1 is applied on literal basis in conjunction with FAQ 2 & 3, then TDS u/s. 194R will become a residual or "catch all" TDS provision which covers all payments which are not already covered by other TDS provisions.	• FAQ 1 may be reconsidered, and it may be clarified that TDS u/s. 194R is applicable only to payment of benefit or perquisite which is taxable u/s. 28(iv) and should not cover transactions under section 41(1) • Appropriate consequential clarifications are also required in FAQ 2 and FAQ 3 which reiterate that deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient.
• A conjoint reading of FAQ 1, 2 and illustration of CIT v Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad) in Circular No. 12/2022 and FAQ 1 of Circular No. 18/2022 creates an ambiguity on applicability of TDS on bad debt write offs • FAQ 1 of Circular No. 18/2022 has granted exemption from TDS on waiver/write off/one time loan settlement by 10 categories of banks/financial institutions. • This raises apprehension for other write offs (e.g. write of trade debts in normal course of business for all industries) • Imposition of TDS obligation will create huge practical challenges and double whammy of loss on write off as also TDS burden.	• On lines of FAQ 1 of Circular No. 18/2022, it may be clarified that any write off of debt whether unilateral or through negotiated settlement or under IBC is not a benefit or perquisite arising from business or exercise of profession and hence not liable to TDS u/s. 194R.

Address implementation issues for TDS on business perquisites (S.194R)

Issue	Recommendation with brief rationale
• FAQ 4 of Circular No. 12/2022 clarifies that free samples would not fall under relaxation provided to sales discount, cash discount, rebate or quantitative discount referred in first three paras of FAQ 4. • It further provides illustration of free medicine samples to medical practitioners as transaction liable to TDS u/s. 194R. • Distribution of free samples is a normal practice of trade and thus cannot be considered a benefit.	• TDS on free samples is not justified since it does not represent 'benefit' or 'perquisite' for the recipients like distributors or retailers who use them for sales promotion and not for any personal benefit. • It should be clarified that TDS u/s. 194R will not apply on free samples distributed to supply chain intermediaries for demonstration to customers and in compliance with statutory guidelines, if any. FAQ 4 may be revisited and modified to that extent
• FAQ 7 clarifies that any expenditure which is the liability of a person carrying on business or profession, if met by the other person, is in effect benefit/perquisite by the second person to the first person in the course of business/profession. • Reimbursement of expenditure necessarily required to be incurred for providing services to client cannot be a benefit/ perquisite. • FAQ 2&3 of Circular No. 18/2022 has clarified that TDS u/s. 194R does not apply on reimbursements to "pure agents" or where TDS is made u/s. 194C or 194J as per FAQ 30 of Circular No. 715/1995 on payments to contractors or professionals	• FAQ 7 may be modified to clarify that reimbursement of personal expenses incurred by the service provider is a benefit or perquisite liable to TDS u/s. 194R. • Reimbursement of business/profession related expenses (like reimbursement of property taxes, water charges, electricity, etc to landlords of rented premises) may be clarified to be not covered by TDS u/s. 194R

Address implementation issues for TDS on business perquisites (S.194R)

Issue	Recommendation with brief rationale
• FAQ 4 of Circular 12/2022 states that Sales discounts, cash discounts or rebates allowed to the customers from the listed retail price represent lesser realisation of the sale price itself. To that extent purchase price of customer is also reduced. • In normal trade practice prevalent in FMCG industry, the sales discounts or rebates are generally passed on to the customers via credit notes which could also be in nature of post-sales or target-linked discounts. In all such scenarios, the discounts will lead to lower sales realization in the books of the manufacturer and lower purchase price in the books of the purchaser. However, the use of the word “listed retail price” is causing ambiguity in interpretation in scenarios where discounts lead to a lower purchase price but is not linked to a specific product (e.g., cash discount or target-linked discounts) or may not be passed on to the end consumer in the chain (e.g., volume discount or other such trade discounts). • In many cases, such discounts are directly passed to end-customers or downstream intermediaries by way of monetary payments to ensure that they are not retained by intermediaries. The Finance Act 2023 has expanded scope of s.28(iv) & s.194R to monetary benefits which raise ambiguity whether such trade discounts are liable to TDS u/s. 194R.	• Therefore, to avoid ambiguity, it may be clarified that any kind of sales discounts, trade discounts, volume discounts or adjustments by way of credit notes, which will effectively reduce the purchase price of the buyer, are outside the ambit of TDS under Section 194R • It may be clarified that discounts directly passed on to end-customers or downstream intermediaries by way of monetary payments are not covered by TDS u/s. 194R.

Address implementation issues for TDS on business perquisites (S.194R)

Issue	Recommendation with brief rationale
• FAQ 7 of Circular No. 18/2022 while seeking to clarify that TDS u/s. 194R does not apply to bonus and rights issue by widely held companies (i.e company in which public are substantially interested as defined in s.2(28) of the Act) has raised ambiguity and uncertainty on applicability of TDS u/s. 194R on similar issue of shares by closely held companies. • The rationale provided in FAQ 7 of Circular No. 18/2022 for non-applicability of TDS (viz. there is no benefit to shareholders on bonus issue since their overall value and ownership remains unchanged and cost of acquisition of bonus shares is taken at NIL) equally applies to closely held companies.	• To remove the ambiguity and uncertainty for stakeholders, FAQ 7 of Circular No. 18/2022 may be modified to clarify that bonus and rights issue by all companies whether widely held or closely held does not trigger TDS obligation u/s. 194R

Notify bonafide cases to which s.56(2)(x) and s.50CA will not apply

Subject	Recommendation with brief rationale
Pursuant to industry representations, the Finance (No.2) Act 2019 amended s.50CA and s.56(2)(x) to give power to CBDT to notify cases to which these provisions will not apply. However, the CBDT has used this power very sparingly to remove hurdles in PSU divestment like Air India, ILFS/ IDBI restructuring, etc. Following are illustrative cases where bonafide transactions face tax hurdles u/s. 56(2)(x) and/or 50CA :- • Fresh issue of shares in scenarios like Initial Public Offer (IPO), private placement, rights, bonus, etc. • Investment made by holding company into its wholly owned subsidiary (domestic as well as foreign company) or other intra-group reorganisation • Time lag involved between fixing up share price by the parties under an agreement and actual allotment / transfer of shares due to time taken in making regulatory compliances and / or seeking shareholder or regulatory approvals • Transfer of shares of a listed company through an off-the-exchange transaction at a pre-determined value (where SEBI takeover code is applicable) • Options or share warrants which are issued at a particular date giving option to the holder to subscribe for shares at a future date at the prefixed value which is generally at FMV on the date of issue of options/warrants (E.g. ESOP Trusts of unlisted companies). • Conversion of an existing instrument into equity shares as per the terms specified at the time of issuance based on the valuations at that time • Transfer or issue of shares or securities in case of corporate insolvency resolution process under IBC or stressed companies, whose book value of assets is much higher than the actual realizable value. • Transfer of assets between relatives for consideration lower than FMV or on account of family settlement	Hence, it is recommended that CBDT should expedite the issue of Notification u/s. 50CA and s.56(2)(x). Further, prior to the issue of Final Notification, it is recommended that a draft Notification should be published for stakeholders' comments to ensure that all possible bonafide cases faced by industry get adequately represented in the Final Notification.

Provide relief from unintended hardship created by Hon'ble SC ruling in Nestle's case on MFN clause

Subject	Recommendation with brief rationale
• The Hon'ble SC in Nestle's case, inter alia, held that even with reference to autonomous most favoured nation (MFN) clause already agreed as part of existing treaty where treaty and protocol are both notified, the MFN clause in terms of which beneficial provisions entered into with third country are to be applied, cannot be made applicable unless a third notification is issued. • This has wide ranging ramifications on cases where MFN benefit under various tax treaties have been claimed in the past based on automatic MFN clause on lower tax rates for royalty/FTS or restrictive scope of FTS, etc • The industry bonafide applied the autonomous MFN clauses in treaties like France, Spain, Hungary, etc based on majority of the rulings in favour of application of such autonomous MFN clause without need for a third Notification. • There is risk of reopening of past cases u/s. 201(1) and/or 147 based on SC ruling which will unsettle all past transactions. Since most such transactions are on "net of tax" basis, the additional tax burden will fall on Indian industry. It will negatively impact the investment environment in India. • The difficulty can be addressed by Government issuing Notifications to activate the lower tax rates for royalty/FTS or restrictive scope of FTS, etc. from the past dates from which they are intended to take effect. Such notifications giving benefit from past dates have been issued by CBDT in the past. • Responding to industry representations, the Government recently issued a Notification on 19 March 2024 lowering tax rates under India-Spain treaty for royalty/FTS to 10% but with prospective effect from AY 2024-25	• At the root of the controversy is absence of notification for clarifying the benefit of automatic MFN clause which was intended by the treaty negotiators to take effect from the date of "trigger event". Therefore, all the adverse implications for past years can be avoided if the Central Government notifies the effect of automatic MFN clause from date of trigger event from which they were intended to be applied by treaty negotiators of both countries. It will put the entire controversy to rest and avoid any adverse actions for past years • It is, therefore recommended, to collate the list of tax treaties contain automatic MFN clause and notify the same in Official Gazette from date of trigger event (from which they were intended to be applied by treaty negotiators of both countries). For instance, the more restrictive scope of FTS under make available clause may be notified for France, Hungary, Sweden, Spain, Belgium treaties • It would provide certainty and transparency for both Indian and foreign entities involved in cross-border transactions and adopting such measures would reflect the government's commitment to fostering an equitable tax environment

Provide tax certainty: Restrict extended limitation period of 10 years to only serious cases of tax fraud

Subject	Recommendation with brief rationale
• Prior to 1 April 2021, the extended period of limitation of 10 years from end of relevant assessment year was applicable only to search/survey cases under old reassessment regime. Else, normal limitation period was maximum 6 years from end of relevant assessment year. • Post 1 April 2021, the new reassessment regime introduced by Finance Act 2021 provides for normal limitation period of 3 years and extended period of 10 years from end of relevant assessment year. • The references in 2021 Budget Speech of Hon'ble Finance Minister to "serious tax fraud/ evasion" and "evidence of undisclosed income" in the form of an asset as also clarification provided in Lok Sabha gave impression that extended period of 10 years applies only to search/survey cases • However, the language of new provisions as further amended by Finance Act 2022 create ambiguity whether extended period of 10 years applies to regular cases as well where quantum of escaped income is > Rs. 50 lakhs. • This has become a sore point in negotiations with foreign investors who seek tax indemnity from exiting shareholders for 10 years instead of 3 years (or 6 years under old reassessment regime).	• In line with object of the new reassessment regime to bring certainty and closure of matters, the extended limitation period of 10 years should be clarified to be applicable only to cases where undisclosed income is found in search, survey or requisition proceedings as was the position under old reassessment regime.

Improve interface with Central Processing Centre

Subject	Recommendation with brief rationale

• Taxpayers face persistent challenges on refunds, TDS credit and returns in automated CPC processing u/s. 143(1)	• Challenges in processing IT returns
	  • Anomalies in ITR utility and in CPC return processing software
	  • Statutory opportunity of prior intimation before making adjustment not given in many cases
	  • Non-consideration of taxpayer's response to prior intimation – adjustments made mechanically
	  • Delays or refusal in carrying out rectifications
	  • Non-redressal of adjustments made u/s. 143(1) in subsequent scrutiny assessment
	• Suggested way forward
	  • Before making adjustment, give proper opportunity (including virtual hearing) to the taxpayer where requested
	  • Replies filed by taxpayer should be dealt by officers having tax domain knowledge. Reasons for rejections should be incorporated in the final intimation
	  • Address anomalies in ITR utility and CPC return processing software at the earliest
	  • Limit the scope of adjustments by CPC to apparent mistakes
	  • Instruct Faceless Assessment Unit to address adjustments u/s. 143(1) in scrutiny assessments

Timely disposal of rectification petitions and orders giving effect to appellate orders

Subject	Recommendation with brief rationale
• S.155(8) provides for time limit of 6 months for disposal rectification applications • S.153(5) provides for time limit of 3 months (extendable by 6 months with approval of superior) for giving effect to appellate orders (otherwise than for conducting fresh assessment or verification). S.244A(1A) grants additional interest of 3% p.a for delay beyond such period. • But in practice, such statutory time lines are seldom observed resulting in cash flow blockage for industry in terms of pending refunds and also higher interest cost for the Government.	• It is recommended that the entire process of filing rectification petitions or passing of orders giving effect may be incorporated into ITR filing or compliance portal with a distinct serial number • The digitisation of the process will bring in transparency and accountability. CBDT can monitor the pendency and issue administrative instructions to the field authorities from time to time for expeditious disposal. • The additional interest of 3% p.a u/s. 244A(1A) may also be extended to delayed disposal of rectification applications

Disposal from CIT(A) need to be in time bound manner

Subject	Recommendation with brief rationale

• Appeal disposals by CIT (Appeals) under new faceless regime since last two years is very slow
• Budget 2023 introduced new forum of JCIT(A) to expedite disposal of small cases but there is no significant improvement in speed of disposal
	• To unclog the system:
	  • Prioritise cases where submissions are already filed by the taxpayer since long - immediately take up for virtual hearing and disposal.
	  • Provide monthly disposal target to be monitored by CBDT
	  • Set up a separate technical unit for faceless appeals to assist JCIT(A)/CIT(A) on legal/technical issues. Else, leverage the existing technical unit in faceless assessment
	• Though the notification prescribe the stay of demand once the 20% of the demand is paid by assessee, however the Department's IT system recovers the full demand automatically from subsequent refunds. Appropriate mechanism be put in place to ensure that recoveries of demand is not more than 20% of demand in assessment.
	• Law may be appropriately amended to grant powers to CIT(A) to grant complete stay of demand when the matter is covered by Tribunal in appellant's own case, favourable judgement of high court , in any other case where CIT(A) deem fit.

Improve Alternate Dispute Resolution mechanisms

Subject	Recommendation with brief rationale

• Advance Pricing Agreements
• Industry compliments the Government for 641 APAs (including 135 BAPAs) signed since introduction of APA program with 125 (including 39 BAPAs) signed in FY 2023-24
	• APA program can be improvised further to clear huge backlog (>800 cases pending as on 31 March 2023) with following steps :-
	  • Build capacity of APA teams
	  • Introduce “Accelerated APA” limited period window to clear all backlog of APAs
	  • Rationalise safe harbour rules to make them attractive - will reduce burden on APA

• Board for Advance Rulings (BAR)	• Clear the pending cases (>350) before the erstwhile AAR) at the earliest
• Dispute Resolution Committee (DRC) comprising of mix of retired and serving high ranking Departmental officials	• Currently, DRS is available to taxpayers with returned income up to Rs 50 lakhs and disputed amount of Rs 10 lakhs. Extend the scheme to mid and large-sized taxpayers and commence pilot project with TP assessments • While Scheme is notified, it is yet to take off due to non-formation of DRCs • There is lack of knowledge of availability of this forum amongst professionals and taxpayers – give adequate publicity

Thank You!