**RESPONSES TO QUESTIONS POSED BY THE HONOURABLE MEMBERS OF THE SELECT COMMITTEE ON INCOME TAX BILL 2025 BASED ON BOMBAY CHAMBER'S SUGGESTIONS DURING HEARING HELD ON**

**16 MAY 2025**

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## 1. Litigation Reduction

**Question:** What are Bombay Chamber's suggestions for reducing litigation and realisation of about Rs. 28.59 lakh Cr locked up in unrealised tax demands? How can disputes be reduced?

**BCCI Response:**

1.1. As of September 2024, >85% of cases pending in Direct Tax Appeals comprising of > 60% of disputed amount are stuck at the first appellate level [CIT(A)/ Jt. CIT(A)]. Accordingly, our suggestions below are focussed on reducing pendency before CIT(A)/JCIT(A). Our suggestions on alternative dispute resolution mechanisms are provided separately.

1.2. The large pendency of cases before CIT(A)/JCIT(A) is due to the introduction of the Faceless Appeal Scheme. While the intention behind such introduction was wholesome, the CIT(A) cadre could not cope up with new scheme which was introduced just before Covid-19 pandemic struck. The transformative change from physical case papers and personal advocacy to paperless online mechanism with limited virtual advocacy was overwhelming for the CIT(A) cadre. The huge backlog of cases has overburdened the CIT(A)/ Jt. CIT(A) Appellate forums.

1.3. To address this, the Central Action Plan 2025-26 of CBDT proposes to improve disposal of pending Appeals as follows:

- An ambitious target has been set to dispose over 2 lakh appeals and about 10 lakh Cr of disputed demand.
- Focused efforts will be made to liquidate substantial number of appeals involving disputed amounts in legacy appeals from the pre-faceless era.
- National Faceless Appeal Centre (NFAC) to come up with SOP for cases involving appeals where tax-payer is not traceable, and, the documents are incomplete, or digital footprints are not available.
- Compulsory disposal of top 1500 appeals in terms of disputed demand [5 highest demand appeals for each CIT(A)/JCIT(A].
- No embargo on disposal of appeals filed during the current year.

1.4. However, in doing so, the CBDT Central Action Plan itself highlights that there are substantial manpower shortages and vacancies at the level of Commissioner (Appeals) (Faceless), and Joint CIT(A).

1.5. Considering this, in order to make the clearance of pendency smooth & effective and grant justice, following steps are recommended to be taken:

- Vacancies at CIT(A) and Jt. CIT(A) level be filled at the earliest.

- The clearance of pendency should be earnestly and expeditiously undertaken on FIFO basis so that oldest matters are disposed first. CBDT may provide a monthly disposal target to the appellate authorities – and the disposal of cases as per such target may be strictly monitored by CBDT.

- Appeals in case of High pitched assessments where the assessed income is more than 3-4 times should be speedily taken up.

- It is seen from faceless appeals that even though the submissions and explanations are filed and are available on portal, yet without looking into them fresh notices are issued on the same issue. The appellate authorities may be instructed to issue notices after considering the submissions and explanations already filed and available on portal.

- On Income Tax Portal, there is no grievance, rectification, early hearing mechanism or petition to be filed before faceless CIT(A). Provision of such facility will avoid filing of second appeals in many cases before the ITAT.

- CBDT vide office memorandum dated 29 February, 2016, modified the guidelines for stay of demand at the first appeal stage issued under Instruction No. 1914 of 1996. CBDT made it mandatory for the tax officer to grant stay of demand once the taxpayer pays 15% of the disputed demand, while the appeal is pending before the Commissioner of Income tax (Appeals). CBDT vide office memorandum dated 31 July, 2017, has further modified Instruction No. 1914 of 1996 and has revised the standard rate prescribed in the office memorandum dated 29 February, 2016, from 15% to 20% for grant of stay at the first appeal stage. However, despite such Instruction, such demands are adjusted against refunds due to the taxpayer for any other years. Such recovery of stayed demand through adjustment against refunds should be avoided where the adjustment results in appropriation of amounts greater than 20% of the demand. Appropriate changes should be made in the internal systems and processes of the Income tax Department to prevent such excessive recovery.

- Presently, provisions of S. 250(6A) of ITA 1961 [corresponding to S. 359(5) of ITB 2025] provides that the CIT(A)/ JCIT(A) should try and pass his order within 1 year from filing of the appeal. However, this is more of a discretionary timeline instead of a statutory one which the Chamber understands is in view of legal bar on time limit for a judicial authority. If statutory time limit for passing appeal order cannot be provided for constitutional reasons, to safeguard the taxpayer, it is suggested to not levy interest under S. 220 of ITA 1961 (corresponding to S. 411 of ITB 2025) for the period of delay in disposal of appeal by CIT(A)/JCIT(A) beyond the persuasive time limit of 1 year in respect of delay not attributable to the taxpayer. This will ensure a measure of accountability for the CIT(A)/JCIT(A)

## 2. Suggestions on Alternate Dispute Resolution Measures

**Question:**

a) Please give note on Alternative Dispute Resolution (ADR) proposal of Bombay Chamber? What is the international experience on mediation?

b) Please clarify whether the suggestion is to reinstate Settlement Commission? If it did not work well in the past, why are we recommending to bring it again?

**BCCI Response:**

### 2.1. Settlement Commission

- The erstwhile settlement provisions under the Income-tax Act, 1961 provided for an alternate mechanism to a taxpayer who chooses to exit the regular process of assessment which would have resulted in determination of tax liability and instead approached the Settlement Commission for settlement of his case under Chapter XIX-A of the Income-tax Act, 1961.

- Introduced vide Taxation Laws (Amendment) Act, 1975, w.e.f. 1- 4-1976, Income Tax Settlement Commission was set up with the following objectives:

    - To provide a machinery for defaulting tax payers to make a clean breast of their affairs through compromise and settlement
    - To ensure disclosure of modus operandi in tax evasion by tax payers wishing to avail of the settlement machinery
    - To reduce litigation
    - To ensure speedy collection of taxes at low cost

- The Settlement Commission faced the following drawbacks due to which it was not a popular mechanism for resolution of disputes:

    - It provided an opportunity for settlement of disputes only once in the lifetime of the taxpayer.
    - A taxpayer can file an application only if his case is pending before the AO and the assessment has not become time-barred.

- Tax along with interest, if any, had to be paid on or before the date of making the application.

- There was considerable delay in disposal of settlement applications due to limited benches of Settlement Commission.

- No mandatory grant of immunity from penalty proceedings.

- Power of Settlement Commission to grant immunity from prosecution under the IPC was withdrawn in respect of applications made on or after 1.6.2007. Even prior to such date, no immunity from prosecution proceedings could be granted if such proceedings have been commenced already.

- However, such mechanism was withdrawn with the introduction of the Dispute Resolution Committee (DRC) with option for pending cases to be dealt with by an Interim Board.

2.2. <u>Dispute Resolution Committee (DRC)</u>

- Introduced by Finance Act 2021 vide Section 245MA of the ITA 1961 [corresponding to clause 379 of ITB 2025], DRC is an ADR option available both at the stage of draft assessment order and post passing of assessment order.

  - DRC comprises of 2 retired IRS members of CIT & above post and 1 serving PCIT/CIT & above

  - DRC can reduce penalties or grant immunity from prosecution, and the scheme is voluntary, serving as an alternative to the conventional appeals process.

- However, its scope is limited to small taxpayers with returned income up to Rs 50 lakhs and disputed amount of Rs 10 lakhs. Further, E-DRS scheme was notified on 30 August 2024 to activate the forum. Nonetheless, the scheme being in its nascency, not many taxpayers who are eligible are aware of it. There is lack of awareness and confidence in the forum on part of taxpayers and tax practitioners.

- As a result, DRC has failed to achieve faster resolution of disputes.

2.3. <u>Dispute Resolution Panel (DRP)</u>

- Similar to DRC, DRP also comprises of a collegium Pr. CIT/ CIT. It is presently available only to non-resident taxpayers or in cases of issues relating to Transfer Pricing. The DRP forum is available after draft assessment order is passed.

- Presently, given that the tax authority is not permitted appeal against DRP directions, its conclusion tends to be inclined towards Revenue. It also does not provide any finality to the disputed issues which can be appealed before the ITAT. As a result, in practical terms, it has become a fast track route to the Tribunal. Further, there are no independent experts within the DRP.

2.4. Our Recommendations – Permit DRC and DRP to Negotiate on Tax disputes

- The DRC scheme's limitation to small taxpayers may not effectively address the lack of effective ADR for tax litigation.

- Thus, the DRC and DRP forum, both of which are constituted by serving (or former in case of DRC) tax authorities of similar seniority, may be made co-extensive to exhaustively cover the entire gamut of taxpayers. Such enhancement will provide more opportunities to larger set of taxpayers to settle their matters **through negotiation** instead of pursuing costly and time consuming litigation.

  - Changes to Scope of DRC:

    (i) We believe that the threshold of returned income of Rs. 50 lakhs and addition of Rs. 10 lakhs should be suitably done away with in favour of a revised threshold of Rs. 100Cr of turnover to cover all micro and small enterprises (MSEs) and give them an opportunity to amicably settle the litigation at threshold instead of pursuing the conventional appellate remedy.

    (ii) Adequate publicity may be given to the DRC Scheme through TV, Print and Online Advertisements to make it popular amongst taxpayers and tax practitioners.

  - Changes to Scope of DRP

    (i) The DRP option, which is presently available only to non-resident taxpayers or issues relating to TP may be extended to all taxpayers not covered by scope of DRC.

    (ii) DRP's powers are presently limited to only confirm, reduce or enhance the variations proposed in the draft assessment order. DRP may be granted powers akin to the DRC such as ability to mediate tax disputes, reduce/ waive penalties, grant immunity from prosecution, etc..

- Additionally, a new and separate mechanism for Mediation may be put in place with Mediators being independent body of experts (not being tax authorities) that would focus on encouraging fair settlement at pre-assessment stage. Further details in this respect are discussed in ensuing paragraphs below.

## 2.5. Role of Mediation in Tax Disputes

- A detailed note on the BCCI proposal for Alternative Dispute Resolution through Mediation and International Experience on Mediation was previously shared with CBDT in November 2020. The said note has now been updated and attached herewith as **Annexure 1**.

- A summary of the note is provided below for ready reference

- Mediation in tax disputes can be an effective and time-bound alternate dispute resolution mechanism to minimise disputes.

- Mediation is extensively and successfully used in many foreign jurisdictions to resolve tax disputes.

- UK, US, Australia, Mexico, Belgium and Netherlands are some examples. Mediation was implemented by these jurisdictions for the following advantages:

    - Addresses excessive and increasing volume of tax appeals which jeopardize the legal protection of taxpayers.

      E.g., In Australia, over time around 85% of litigation cases are resolved by agreement between the ATO and the taxpayer. Of the remainder which proceed to a hearing about 3 quarters of litigation cases go the way of the ATO.

      In UK, 86% of the cases which were accepted for ADR (including mediation) were resolved.

    - Faster collection of taxes under dispute

      E.g. UK HMRC had reported a 62% rise in disputed tax collected using ADR (including mediation) during FY 2017- 18 from FY 2016-17*

    - Assistance to Courts in resolving disputes in appropriate cases by using expertise and skill of third party facilitators

      E.g., in Australia, both Federal Court and Appellate Tax Tribunal refer cases for ADR processes (inter alia, mediation)

    - Increases trust in tax authorities

      E.g. In a survey, the Australian Tax Authority (ATO) was the most trusted Australian government agency, with 81% of people trusting their services, and also scored the highest of all Australian government agencies in satisfaction with 82% of participants satisfied with the ATO services they use.

- In this light, it is recommended that a time-bound Mediation mechanism for tax disputes be introduced in the Income tax law with following features, which will have the potential of reducing the numerous litigation cases
    - Mediator to be an independent body of experts that would focus on encouraging fair settlement at pre-assessment stage
    - Mediation to provide final and binding settlement without penalty or prosecution to ensure certainty, relief from long drawn litigation
    - The mechanism to have wider reach to include both domestic and international tax issues
    - Short duration of 90 days proposed for faster resolution and early collection of tax
    - Initially to be used for TP cases and later, with experience, to non-TP cases also
    - DRP / CIT(A)/ DRC route to continue independently for resolution of disputes
- This will ensure that the drawbacks faced by the Settlement Commission and the other ADR mechanisms such as DRC, DRP, etc. are redressed and would go a long way in reducing direct tax litigation in India.

### 3. Accountability on Part of Tax Authorities

**Question:** What are suggestions on ensuring accountability on part of the Department?

**BCCI Response:**

3.1. The Taxpayer's Charter is published on Income Tax Department's website at following link - taxpayer-charter.pdf

3.2. The statutory basis for Taxpayer's Charter is s.119A of existing ITA 1961 which is proposed to be continued as clause 240 in the new Bill which reads as follows:

> *"The Board shall adopt and declare a Charter for Taxpayers and issue such orders, instructions, directions or guidelines to other income-tax authorities as it considers fit for the administration of such Charter"*

3.3. The Income Tax Department publishes a monthly report on Taxpayer charter compliance. The latest report for April 2025[1] is provided at **Annexure 2.** for ready reference. The report

[1] Source: Taxpayers' Charter Reports

provides data on opening inventory of various applications, new applications received, disposals during the month and closing inventory with aging analysis.

3.4. There are statutory timelines prescribed in the existing ITA 1961 as well as new Bill for certain applications. For instance, timeline for issue of refund u/s. 143(1) on processing of return is 9 months from the end of the financial year in which the return is filed. But such refunds are granted much faster in majority of the cases. The average processing time for refund reduced from 16 days in FY 2022-23 to 10 days in FY 2023-24 (Refer, para 6.1 of Finance Standing Committee Report dated 19 March 2025)

3.5. But there are also several processes where no statutory timelines are prescribed under the existing Act or new Bill. They are illustratively as follows:

- Recognition/approval to provident fund/superannuation fund/gratuity fund
- Approval to an employees' contributory fund under section 10(23AAA) of the I.T. Act 1961 for employee welfare measures like death benefit, medical relief, etc
- Application for lower or NIL TDS certificates
- Application for approval of Hospitals in respect of medical treatment of prescribed diseases

3.6. Separately, the following may also be noted:

- A taxpayer has to pay additional tax, interest and penalty in case of any additions to returned income in assessment. It is a routine practice of Assessing Officers to initiate penalty proceedings in case of every addition made in assessment which forces the taxpayer to litigate the additions instead of closing the matter by paying additional tax and interest. However, in case of any frivolous additions made by the Assessing Officer (especially in high-pitched assessments), there is no accountability under the ITA 1961 or ITB 2025 for the Assessing Officer for causing harassment to the taxpayer by raising frivolous demands and/or recovery of taxes through coercive means.
- As per Section 245 of ITA 1961 [Cl. 438 of ITB 2025], the tax authority has the right to withhold, vide an intimation, refunds due to a taxpayer where there are ongoing proceedings in respect of any other tax year. In this respect, FA (No. 2) 2024, effective from 1 October 2024, omitted the requirement of AO being of the opinion that grant of such refund is likely to adversely affect revenue. It also increased the period of withholding refund from date of assessment order to 60 days from the date of assessment order with consequential denial of higher interest under section 244A of ITA 1961 for such period.

  Additionally, there is no provision in the existing ITA 1961 for a taxpayer to be given an adequate opportunity of being heard before withholding of refunds and/or their adjustment against existing demands. While CBDT has issued Instruction No. 02/2023 in this regard, it only requires proper application of mind by tax authority and recording of cogent reasons in order to trigger S. 245(2) of ITA 1961. It nowhere specifies that such application of mind must be after giving opportunity of being heard to Taxpayer. Taxpayer will be merely given intimation of such action [along with the speaking order under proposed section 245(2) of ITA 1961, as applicable].

- Currently, income tax returns e-filed by taxpayers are centrally processed at CPC, Bangalore u/s 143(1) of the Income Tax Act (Act). The objective for establishing CPC was to expeditiously determine the tax payable or any refund due to the taxpayers or check for any mistakes apparent in the income tax return. However, there are various hardships being faced currently by taxpayers in such processing which include:

  (i) Anomalies in ITR utility

  (ii) Anomalies in CPC return processing software

  (iii) Non-provision of statutory opportunity of prior intimation before making adjustment

  (iv) Non-consideration of taxpayer's response to prior intimation – adjustments are mechanically made

  (v) Delays or refusal in carrying out rectifications

  (vi) Non-redressal of adjustments made u/s. 143(1) in scrutiny assessment

3.7. There is no statutory accountability for enforcement of Taxpayer's Charter. BCCI recommends the following measures for enhancing accountability on part of the tax officials:

(i) Certain applications like approvals for provident fund/superannuation fund/gratuity fund, employees contributory funds, etc may be deemed to be approved if the applications are not disposed by specified timeline (say, 3 months)

(ii) All such applications should be digitally processed to keep digital footprint of date of application and date of disposal

(iii) S.154(8) of ITA 1961 (s.287(9) of ITB 2025) provides for time limit of 6 months for disposal rectification applications. S.153(5) of ITA 1961 (S. 286 (1) Sr. 10 of ITB 2025) provides for time limit of 3 months (extendible to 6 months[2]) for giving effect to appellate orders (otherwise than for conducting fresh assessment or verification) (popularly called OGEs or orders giving effect). S.244A(1A) of ITA, 1961 (clause 437(4) of ITB 2025) grants additional interest of 3% p.a. for delay in passing OGEs

[2] Such extension is available in circumstances where it is not possible for the Tax Authority, for reasons beyond his control, to pass the OGE within 3 months and the tax authority obtains approval from the Principal Commissioner or Commissioner on receipt of such request in writing from the tax authority.

beyond such period. It is recommended that the additional interest of 3% p.a. u/s. 244A(1A) may also be extended to delayed disposal of rectification applications. If rectification petition is not disposed within the stipulated time limit, then it may be statutorily provided that such rectification is deemed to be accepted

(iv) Personal accountability measures may be introduced for delay in disposal of rectification/OGEs. In this regard, we may refer to recent Bombay High Court judgement dated 17 March 2025 in the case of Nirmalkumar Mulchand Puruswani[3] where the Bombay HC directed recovery of interest for delay beyond statutory timelines from the concerned departmental officials. (Copy enclosed at **Annexure 3**). This measure may be adopted as last resort for unreasonable delay – say, 3 years.

(v) It is suggested to expressly provide in S.439 of ITB 2025 (comparable to s.270A of ITA 1961) that no penalty shall be levied in cases where any addition is made on rejection of a bonafide view taken by an taxpayer on an issue on the basis of (a) Decision of an appellate authority in his own case; or (b) On the basis of a judgement of Tribunal, High Court or Supreme Court, which is in favour of the taxpayer

(vi) It is recommended to insert a provision requiring the tax authority to give the taxpayer an adequate opportunity of being heard before taking action of adjustment or withholding of refund. Further, adjustment or withholding of refund must be vide a speaking order only [and not an intimation as under section 245(1) of ITA 1961 (corresponding S. 438(1) of ITB 2025)] which may be made appealable before CIT(A).

(vii) Withholding of refunds if at all to be done should be made applicable only after draft assessment orders are passed in the case of taxpayers in respect of pending assessment and reassessment proceedings.

(viii) The anomalies with CPC return processing may be addressed based on suggestions vide detailed representations at **Annexure 4**.

## 4. Incentivising Research and Development Activity

**Question:** Whether R&D expenditure should be made mandatory like CSR expenditure?

**BCCI Response:**

4.1. As announced by the Hon'ble Finance Minister Nirmala Sitharaman in the Budget Speech 2024, the desire of the legislature is to simplify the Indian direct tax law through simplification of complex provisions, removing redundancies and reducing litigation

[3] [2025] 173 taxmann.com 270 (Bombay)

burden. In fact, a similar desire was also expressed by the erstwhile Finance Minister, Late Shri Arun Jaitley, in the Budget 2015 where it was noted that *"A regime of exemptions has led to pressure groups, litigation and loss of revenue. It also gives room for avoidable discretion."* Further, it was also noted that the various kind of tax exemptions and incentives for corporate taxpayers account for a large number of tax disputes.

4.2. Keeping this mind, the various weighted deductions available under the ITA 1961 were slowly phased out. This includes S.35(2AB) of ITA 1961 which used to grant a weighted deduction of 200% on revenue and capital expenditure (except on land and building) incurred on scientific research on in-house R&D facility set up by a company engaged in specified business (subject to DSIR's recognition and approval of the in-house R&D facility and DSIR's approval of the expenditure incurred by in-house R&D facility).

4.3. In lieu of this, recent policy measures announced the Budgets over the last few years have focussed instead on providing direct non-tax benefits for R&D such as:

(i) Encouraging private sector to scale up research and innovation through setting up of a corpus of Rs. 1 Lakh-Crore to provide long-term loans at low or nil interest rates (Out of this, Rs. 20,000 Cr was allocated in the 2025 Budget for implementation).

(ii) Utilisation of corpus of Rs. 1 Lakh-Crore as above for funding in the nuclear reactor space.

(iii) Operationalization of the Anusandhan National Research Fund for basic research and prototype development

(iv) Announcement of provision of funding for agriculture research with a focus on raising productivity and developing climate resilient varieties.

(v) Grant of 10,000 fellowships for technological research in IITs and IISc with enhanced financial support under the PM Research Fellowship scheme

4.4. From the above, it is evident that the desire is to keep the tax law simple and incentivise R&D through other means. In line with such policy intent, the Chamber believes that incurrence of R&D expenditure should not be made mandatory.

4.5. While CSR expenditure has been made mandatory for large companies, it is not allowed as deduction in income-tax (Refer, Explanation 2 to s.37(1) of ITA; corresponding clause 34(2)(b) of ITB 2025).

4.6. Instead of making R&D expense mandatory, the government may, if at all (and in addition to non-tax measures already enumerated above), consider the measures enumerated in the following paragraphs to encourage "Make in India" and align with the Government's policy of making India an attractive destination for manufacturing and R&D.

4.7. <u>Clause 45(2)(c) of ITB 2025 [S.35(2AB) of ITA 1961] for deduction in respect of DSIR-approved inhouse R&D facility being redundant may be omitted</u>

- **ITA 1961 Provisions:**

    - S.35(1)(i) and (iv) of ITA 1961 grant 100% deduction for revenue and capital expenditure respectively incurred on R&D related to taxpayer's business without any need to seek any administrative approval from Tax Authority or Department of Scientific and Industrial Research (DSIR) for claiming these deductions.

    - In contrast, S.35(2AB) of ITA 1961 used to grant a weighted deduction of 200% on revenue and capital expenditure (except on land and building) incurred on scientific research on in-house R&D facility set up by a company engaged in specified business[4], subject to DSIR's recognition and approval of the in-house R&D facility and DSIR's approval of the expenditure incurred by in-house R&D facility. This involved significant compliances in the form of filing various applications for obtaining multiple approvals, compliance with DSIR guidelines, etc. which made the provision complex.

      Pursuant to phased reduction of corporate tax rate to 25% and simultaneous withdrawal of tax incentives, the Finance Act, 2016 reduced weighted deduction under s.35(2AB) to 150% from tax year 2017-18 and to 100% from tax year 2020-21. Where no weighted deduction is available, there is no benefit in getting the R&D facility (and its expenditure) approved by DSIR – as even in absence of such approval, 100% deduction can be claimed of any capex or revenue expenditure on R&D u/s. 35(1)(i) or s.35(1)(iv). Thus, deduction u/s. 35(2AB) had turned redundant from tax year 2020-21 onwards.

    - S.115BAA of ITA 1961 which provides for concessional tax rate of 22% (effective tax rate of 25.17% with surcharge and cess) for domestic companies requires add back of entire deduction claimed u/s. 35(2AB) – it is not restricted to quantum of weighted deduction over and above actual expenditure. Where DSIR approval is not obtained as aforesaid, the taxpayer does not claim any deduction u/s. 35(2AB) – the taxpayer only claims deduction u/s. 35(1)(i) or s.35(1)(iv) which is not required to be added back for the purpose of s.115BAA.

- **ITB 2025 provisions:**

    - Clause 45(2)(c) of ITB 2025 corresponds to s.35(2AB) of ITA 1961. Clause 45(1) of ITB 2025 corresponds to s.35(1)(i) and s.35(1)(iv) of ITA 1961.

    - As compared to ITA 1961, a possible reading of clause 45(2)(c) of ITB 2025 seems to suggest that, in respect of expenditure on approved inhouse R&D facility, only clause 45(2)(c) shall apply and the taxpayer's choice to claim deduction clause 45(1) is foreclosed.

[4] Bio-technology or business of manufacture or production of article or thing (not specified in the Eleventh Schedule)

*"45. (1) A deduction shall be allowed for any expenditure, being in the nature of—*

*(a) capital expenditure, but not on acquisition of land, as such or as part of any property; or*

*(b) revenue expenditure; or*

*(c) both,*

*incurred on scientific research related to the business of the assessee subject to provisions of this section.*

*(c)(i) A deduction shall be allowed under sub-section (1), in respect of any expenditure incurred (not being expenditure in the nature of cost of any land or building) by a company engaged in the business of..."*

- **Issue:**
  - Where inhouse R&D facility is not approved by DSIR, clause 45(2)(c) would be inapplicable, and taxpayer would be free to claim 100% deduction as per clause 45(1). Such expenditure also does not need add back in computing income under cl. 200 of ITB 2025 (corresponding to s.115BAA of ITA 1961). Here, ITB 2025 has no incremental impact.
  - Clause 45(2)(c) being a redundant provision ought to have been omitted in ITB 2025.
- **Representation:**
  - The provisions of s.35(2AB) of ITA 1961 are now academic as no weighted deduction is available under ITA 1961. Hence, it is suggested to delete its corresponding provision of clause 45(2)(c) of ITB 2025 to avoid potential ambiguities on its interplay with other provisions.

4.8. <u>Rationalise Patent Box Provisions u/s 115BBF of ITA 1961 [Cl. 194 (Table Sl. No. 2) of ITB 2025]</u>

- The Indian Patent Box Tax Regime u/s 115BBF of ITA 1961 was introduced into the law vide Finance Act 2016, w.e.f. 1 April 2017. It offers 10% tax rate to residents on royalty income from patents developed and registered in India.
- However, despite it being in operation for nearly 8 years, due to various issues faced by the industry as enumerated hereunder, the benefits of the concessional tax rate has practically not seen much uptake.

- In contrast, internationally, incentives for R&D and IP Development form a crucial component of the incentives offered by various countries. For instance, in the 2023 Calendar Year, 1600 Companies have opted for the Patent Box in UK resulting in a tax relief of £ 1468m[5].

- Considering the limited uptake of the Indian Patent Box tax regime and to incentivise IP development in India, the provisions of S. 115BBF of ITA 1961 (Clause 152 of ITB 2025) may be further rationalised by modifying the provisions as summarised below:

    - Presently, benefit u/s. 115BBF of ITA 1961 (Cl 152 of ITB 2025) is restricted to 'true and first inventor of the invention'. This makes the provision a non-starter under Patent Act which does not acknowledge a company or firm as a 'true and first inventor'. It is recommended that the condition of being 'true and first inventor' be omitted. If the intent is to allow benefit only to first person to register patent, the phrase 'being the assignee of the true and first inventor in respect of the right to make an application for a patent' may be used instead.

    - There currently exists ambiguity on whether a Patent registered both in India as also in a foreign country may be regarded as qualifying under Patent Box regime. It may thus be clarified that royalty received from overseas for a patent which is registered in India as also in a foreign country also qualifies for concessional rate of tax.

    - Benefits under the Patent Box regime are presently available only to royalty income from licensing out the patent and does not cover self-exploitation of patents by manufacture and sale of patented articles by the eligible taxpayer himself. It is recommended that the concessional rate be extended to companies that exploit their own patents in the manufacture and sale of articles, by imputing a 'royalty' income determined on the basis of the arm's length principle. Such imputation may be limited to 5% of the sales of the patented products. This will indirectly encourage "Make in India" and align with the Government's policy of making India an attractive destination for manufacturing. Internationally, the Patent Box Regime of many countries like UK, Netherlands, Belgium, Italy, etc., offer concessional tax rate benefit on sale of patented products.

[5] Patent Box relief statistics: September 2024 - GOV.UK

**5. Remove ICDS to simplify income computation**

**BCCI Suggestion**: ICDS may be removed, and specific tax rules may be provided in the Act itself (with detailed guidance in CBDT Circulars) to address Ind-AS fair value adjustments.

**Question:** Whether Bombay Chamber has suggested removal of ICDS in the past? If ICDS is removed, whether it will lead to increased litigation on interpretation issues? How can disputes be prevented in such case?

**BCCI response:**

5.1. It is clarified that BCCI had made similar recommendation during the first stakeholders' meeting on the new income tax law convened by Hon'ble Revenue Secretary on 18 September 2024 at New Delhi

5.2. The ICDS as notified, does not lead to any substantial differences between taxable income and accounting income. Most ICDS adjustments are only on account of timing differences through deferral of recognition of expenditure/ losses or preponement of income recognition as compared to book treatment as per applicable accounting standards (Ind-AS or IGAAP). Hence, it is recommended that ICDS may be removed for items which are in the nature of timing difference only (e.g. Revenue recognition, valuation of inventory, Marked-to-market adjustments, etc.)

5.3. Instead, specific tax rules may be provided in the Act itself (with detailed guidance in CBDT Circulars similar to UK, Singapore) to address specific peculiar Ind-AS fair value adjustments. For e.g. S. 36(1)(xviii) of ITA 1961 (corresponding clause 32(1)(h) of ITB 2025) which disallows MTM/expected losses.

5.4. Rather than increased litigation, removal of ICDS supplemented with detailed guidance on relevant issues will reduce compliance burden and curb litigation which is presently seen in relation to timing differences which is fruitless and results in accelerated collection of taxes which would even otherwise become payable to the treasury in due course.

**6. Simplification of domestic TDS / TCS regime**

**BCCI Suggestion**: Currently, there are multiple rates and thresholds prescribed for applicability of TDS and TCS provisions causing difficulty in compliance. It is recommended to relook at the TDS/TCS provisions with an objective to (i) Simplifying and reducing the overlap in TDS compliance; (ii) Avoiding cash flow blockage for the industry and cost by way of interest on refunds for the Government; (iii) Bringing in parity in rates and restricting it to say two or three rates; (iv) TDS on purchase of goods and TDS on e-commerce transactions which are currently levied @ 0.1% be made applicable only to payees who are not registered with GST. It will better align with the Government's intention of widening and deepening the tax net

**Question:** On rationalisation of TDS/TCS rates, whether any analysis is made on potential revenue impact? How can negative impact on revenues be mitigated?

**BCCI response:**

6.1. The different rates and different thresholds give rise to unwarranted characterisation disputes and complexities. Further, it also places unnecessary compliance burden on taxpayers where information is collected in respect of transactions which are already reported under the extant GST framework. This blockage of funds in TDS results in loss of business opportunities for the industry and increase in borrowing cost. Although the refund is received with 6% per annum interest, the blockage of funds with Government neither helps the Government (since it has to bear interest cost) nor helps the industry which can make better alternative use of the funds. Given the above complexities that are also a fertile ground for litigation, the Government may consider reducing the disparity in TDS rates/ do away with some of the TDS provisions (where information about the transaction is available through Form 26AS/ AIS/ GST returns) and provide for a simple TDS framework for domestic transactions as discussed in our presentation before the Hon'ble Select Committee on 16 May 2025 [Refer Slide 11 titled "Simplification of domestic TDS / TCS regime"].

6.2. BCCI has not made analysis of potential revenue impact of TDS/TCS rates rationalisation. However, we refer to the following data of refunds granted in last 3 years made available by the Tax Department to the Standing Committee on Finance (Refer, para 6.1 of Standing Committee's Report dated 19 March 2025)

| Financial Year (FY) | Number of refunds issued | Amount of Refund (in Rs. Cr) | Average time* taken for processing income tax returns |
|---|---|---|---|
| 2021-22 | 2,49,28,636 | 2,20,656.86 | 26 days |
| 2022-23 | 3,20,55,070 | 2,99,911.89 | 16 days |
| 2023-24 | 3,49,68,724 | 3,87,816.08 | 10 days |
| 2024-25** | Not available | 4,76,743.00 | Not available |

Note:

(a) The average processing time relates to all returns filed for the given AY. Separate average processing time for refunds is not available.

(b) The refund is determined and ready for credit in the bank account once the Income tax return is processed. However, in some cases, the credit of refund gets delayed due to failure of validation of bank account by the taxpayers

(c) Data for FY 2024-25 is sourced from Income tax Department's website( Direct Tax Collection for FY 2024-25 as on 31.03.2025 (1).xlsx)

6.3. The above data shows that the number and quantum of refunds has been increasing on year on year basis. While the Tax Department has brought down the average time for processing of return from 26 days to 10 days with use of technology, still, it shows that higher refunds are required to be granted to due to excessive TDS/TCS. The refunds also involve interest cost to the Government. For instance, with the recent extension of due date of filing returns for non-audit cases from 31st July 2025 to 15th September 2025, higher interest will need to be provided to taxpayers who are eligible for refund in excess of 10% of final tax liability. Infact, the Parliamentary Standing Committee on Finance in its report dated 12 March 2020 noted that for the year 2019-20, direct tax refunds of more than Rs. 1.7 lakh crores were given during the year and the amount of interest burden on the same was about Rs. 23,000 crores.

6.4. Further, TDS/TCS compliances comes with serious penal and prosecution measures which needs to be softened. While the payer suffers adverse consequences of recovery of TDS shortfall, like - interest, penalty, prosecution and disallowance of expense (with consequential impact of tax, interest and penalty) for default in TDS compliance, there is no incentive for payer who is compliant and diligently deducts/collects & pays TDS/TCS to the Government. The TDS/TCS provisions reduce the cost of collection of taxes for the Government and hence deserves a more benign approach towards the deductors.

6.5. In this backdrop, it may be safe to suggest that rather than negative impact on government revenues, simplification and rationalisation of TDS provisions would be revenue neutral if the TDS rates are recalibrated after extensive data analysis of the TDS provisions which result in maximum refunds while at the same time ensure fulfilment of the objective of collecting information is fulfilled.

6.6. Furthermore, the above data does not reflect cases of large corporates, who suffer TDS of small amounts on voluminous transactions like TDS on purchase of goods u/s. 194Q @ 0.1% or TDS on e-commerce transactions u/s. 194-O @ 0.1%. While such corporates may still need to pay advance/S.A tax, the compliance burden associated with such small amounts of TDS on voluminous transactions is significant. Such taxpayers have to exert significant efforts in reconciliation of their revenue as per financial statements with (a) TDS made by their customers and (b) GST data captured in AIS/Form 26AS. It is hence recommended that transactions which are subject to GST should be kept outside the scope of TDS/TCS.

**7. Leveraging on the GST database**

**Question:** How can GST framework be used to increase income tax base?

**BCCI Response:**

7.1. GST framework is already being well leveraged by the Income Tax Department. A Memorandum of Understanding (MoU) was signed between the Central Board of Direct Taxes (CBDT) and the Central Board of Indirect Taxes and Customs (CBIC) on 21 July 2020, for data exchange between the two organisations.

7.2. The MOU facilitates the sharing of data and information between CBDT and CBIC on an automatic and regular basis. In addition to regular exchange of data, CBDT and CBIC also exchanges with each other, on request and spontaneous basis, any information available in their respective databases which may have utility for the other organisation.

7.3. A Data Exchange Steering Group has also been constituted for the initiative, which meets periodically to review the data exchange status and take steps to further improve the effectiveness of the data sharing mechanism.

7.4. Based on such autonomous data exchange, taxpayer's AIS/Form 26AS is populated with GST outward and inward supply data which the taxpayer is required to reconcile with its financial statements/income tax records and offer correct income to tax.

7.5. However, it may be pointed out that there are certain conceptual differences between transactions liable to GST and transactions liable to income tax. For example, movement of goods from a taxpayer's factory to warehouse is liable to GST; the factory and warehouse are treated as two separate taxable entities (although having same PAN) for GST purposes. On the other hand, for income tax purposes, such movement of goods is non-taxable transaction. Due to such differences between GST and income-tax, reconciliation between the two can, at times, become very complex – particularly, where there are voluminous transactions, reversals, discounts, rebates, etc.

**8. Impact on Tax collection due to VDA taxation:**

**Question:** On crypto currency, how can India ensure that it collects its fair share of taxes from Rs. 3 L Cr business which has moved outside India?

**BCCI Response:**

8.1. Finance Act 2022 introduced a special regime for taxation of Virtual Digital Assets (VDA) in the form of S.115BBH of ITA 1961 (corresponding to clause 194 [Table: S. No. 4] of ITB 2025) which provides for onerous tax implications:

- Tax rate of 30% (plus surcharge & cess)

- Tax on Gross revenue less cost of acquisition
- No other expense (including regular business expense) allowed
- No set off of loss
- TDS @ 1% under S. 194S on buyer or crypto exchange

8.2. S.2(47A) defines VDA to mean in essence a digital representation of value, such as information, code, number, or token, that is:

- Not Indian or foreign currency.
- Generated through cryptographic or other means.
- Exchanged with or without consideration.
- Used as a store of value, unit of account, or for financial transactions/investments.
- Can be transferred, stored, or traded electronically.

8.3. This includes assets like cryptocurrencies (e.g., Bitcoin, Ethereum), non-fungible tokens (NFTs), and other digital tokens.

8.4. The stringent tax measures prompted many Indian crypto users and businesses to migrate to offshore platforms, resulting in capital flight and a loss of potential tax revenue for the Indian government. A report by the Esya Centre indicates that between July 2023 and October 2024, over INR 2.63 lakh crore worth of crypto transactions were conducted on foreign platforms, accounting for more than 60% of the total trading volume. Further, WazirX (India's largest cryptocurrency exchange) reported a 63% drop in trading volume immediately after implementation of TDS under S. 194S of ITA 1961.

8.5. Further, prominent figures in India's crypto industry, including the co-founders of WazirX and Polygon, have relocated to Dubai and Singapore, seeking more favourable regulatory environments. Since crypto assets, by their nature, are highly amenable to tax evasion and illicit fund flows, including the movement of black money across borders, the imposition of stringent tax measures in ITA 1961 appears to be a conscious strategy to regulate the crypto sector, aiming to curb potential misuse and ensure compliance.

8.6. At present, India does not have a proper regulatory framework for cryptocurrencies. The issue is made more complex by the lack of an international consensus on how such cryptocurrencies are to be regulated.

8.7. However, pending internation consensus on a regulatory framework, for the purposes of collecting information on crypto transactions, Finance Act 2025 introduced S. 285BAA in ITA 1961, making it mandatory for prescribed reporting entities to furnish transaction details of crypto assets. This move aligns with India's commitment to the OECD's Crypto-

Asset Reporting Framework (CARF), which mandates the automatic exchange of tax-relevant information on crypto-assets among participating jurisdictions, which is set to be implemented with effect from 1 April 2026.

8.8. Once the above referred automatic information exchange is implemented and information starts flowing in from other countries, the Government is expected to have relevant actionable information on overseas crypto transactions by Indian residents and thereby ensure that India collects its fair share of tax revenue from overseas crypto transactions entered by its citizens. This is similar to existing automatic information exchange under FATCA with US and bilateral/multilateral treaties with other countries which provides Indian Government with actionable data of foreign assets (like bank accounts, depository accounts, securities, etc) held by Indian citizens through which taxes on undisclosed foreign assets/incomes can be collected under Black Money Act.

8.9. In the long run, an appropriate regulatory framework for crypto assets based on international consensus will help foster an enabling environment for encouraging digital innovation through blockchain technology and discouraging crypto-assets which are amenable to illicit fund flows and tax evasion.

### 9. Carve out Non-Fungible Tokens (NFT's) from onerous crypto asset taxation

**BCCI Suggestion:** NFTs which are by nature not a crypto asset / crypto currency and where the transaction is not undertaken in crypto asset / crypto currency may be kept out of VDA tax regime.

**Question:** If Bombay Chamber's recommendation of removing all NFTs from crypto taxation is accepted, how will cross border trade be impacted? Whether any threshold conditions should be introduced?

**BCCI Response:**

9.1. Finance Act 2022 introduced a special regime for taxation of Virtual Digital Assets (VDA)

- Tax rate of 30% (plus surcharge & cess)
- Tax on Gross revenue less cost of acquisition
- No other expense (including regular business expense) allowed
- No set off of loss
- TDS @ 1% on buyer or crypto exchange

9.2. S.115BBH of ITA 1961 (corresponding to clause 194 [Table: S. No. 4] of ITB 2025) deals with taxation of Virtual Digital Asset (VDA) which provides for onerous tax implications of 30% tax rate on net gain without set off of losses

9.3. S.2(47A) (b) defines VDA to mean, inter alia, “a non-fungible token (as notified by Central Government) or any other token of similar nature, by whatever name called”.

9.4. A non-fungible token (NFT) is a unique digital record of an underlying asset which can either be a physical asset (say a painting) or a digital asset (say music video) on the blockchain.

9.5. Prior to insertion of S. 115BBH, tax implications on sale of NFT were dependent on the tax implications of the sale of the underlying digital/physical asset tagged to the NFT. Pursuant to insertion of s.115BBH and issue of Notification No. 75/ 2022 dated 30 June 2022, NFTs relating to intangible/digital asset are notified NFTs qualifying as VDA and NFTs relating to physical asset are excluded NFTs. Consequently, NFTs attached to physical assets like paintings, souvenirs, etc are outside the scope of onerous VDA taxation whereas NFTS attached to digital assets like digital paintings, artwork, etc are brought within the scope of onerous VDA taxation.

9.6. The Government’s intent of special tax regime of VDAs was disincentivising transactions in crypto assets like Bitcoin, Ethereum, etc.

9.7. However, such strict regime is also extended to Non-Fungible Tokens (NFTs) which are treated as VDA unless attached to physical asset (like physical painting, physical souvenir, etc.)

9.8. The policy of blanket inclusion of NFTs disincentivises bonafide businesses –

- It deters taxpayers that propose to use blockchain technology for conventional businesses
- Existing provisions would invariably result in transactions being taxed at 30% solely because they involve tokenization, even when the underlying asset being transferred isn't a crypto asset and the consideration isn't in crypto assets either.
- Discrimination of NFTs based on physical or digital asset is unwarranted as NFTs in digital assets are very similar to NFTs in physical assets.
- Tokenization as a concept has been widely accepted in global business community for inter-alia validation and authenticity of the owner of an asset.

9.9. Thus, mere tokenization of an asset (which is otherwise not a crypto asset and the transaction is not undertaken in crpto asset/ currency) should not be a basis to attract onerous consequences.

9.10. NFTs are not comparable to Bitcoin or Ethereum which are not backed by an underlying asset.

9.11. International experience also supports that NFTs are provided similar treatment as underlying assets.

9.12. The extension of VDA regime to NFTs discourages transactions in the digital and blockchain space which is against the intent of the Government to provide a boost to the digital economy.

9.13. BCCI's recommendations in this behalf are as follows:

- NFTs which are by nature not a crypto asset / crypto currency and where the transaction is not undertaken in crypto asset / crypto currency may be kept out of VDA tax regime under s.115BBH of ITA 1961 (corresponding to clause 194 [Table: S. No. 4] of ITB 2025) for the time being.

- This would ensure that Indian businesses that only propose to use blockchain to meet global standards (eg. tokenization) continue to operate without the risk of being taxed on gross basis of 30%.

- Once the framework for dealing in such assets is developed, it can be reconsidered in future after compiling relevant economic data and assessing the risks from tax policy perspective.

- TDS on such transactions may continue to track such transactions.

9.14. It is submitted that the above recommendations will not adversely affect cross border trade. Rather, it will have positive effect on Indian digital entrepreneurs to earn export revenue from selling NFTs outside India. Such entrepreneurs need not migrate outside India to avoid the rigors of VDA taxation. It will also have a positive spin-off effect on ancillary industry supporting such digital blockchain activity like cloud services, data warehousing, etc

9.15. The threshold conditions for exclusion from VDA taxation could be: (a) that it should not involve a crypto asset which otherwise falls under other limbs of definition of VDA; and (b) the consideration for the transfer of NFT should be received in fiat currency (Indian or foreign) and not in the form of crypto assets.

## 10. Structural changes in Income Tax law:

**Question:** Whether structural changes are required in income tax law in addition to simplification changes?

**BCCI Response:**

10.1. The new Income tax Bill 2025 was introduced with an aim to achieve following four fundamental objectives:

(a) Simplification of language

(b) Removal of redundant provisions.

(c) Litigation reduction

(d) Compliance reduction

10.2. While the Bill has made commendable strides in simplifying language and removing obsolete provisions, these measures alone are insufficient to effectively reduce litigation and compliance burdens. To achieve meaningful reform, profound structural changes are required to be made. Such changes go beyond mere linguistic changes in the tax laws and require a comprehensive overhaul of the tax framework.

10.3. In this regard, the two slide decks furnished by us in the course of hearing before the Hon'ble Select Committee contain detailed suggestions on the changes which can be made in the new Bill. They are broadly on following areas :-

(1) Converge to single tax regime for taxpayers instead of multiple regimes with different tax rates

(2) Insert provision clarifying deductibility of prior period expenditure

(3) Enhance turnover limit for small businesses for availing benefit of presumptive taxation

(4) Omit disallowance for delayed dues to MSE enterprises

(5) Remove ICDS to simplify computation

(6) Omit s.145A to simplify valuation of inventory as per accounting principles

(7) Extend sunset date for new manufacturing companies for availing 15% tax rate to 31 March 2030

(8) Enhance monthly remuneration limit for availing incentive deduction for new employees from Rs. 25,000 per month to Rs. 1 lakh per month

(9) Remove or rationalise Patent Box regime

(10) Expand transition of business losses and unabsorbed depreciation in amalgamation for service, retail and other sectors

(11) Address anomalies in presumptive taxation for non-residents providing services/technology for electronic manufacturing in India

(12) Expand presumptive taxation for non-residents executing EPC contracts in all sectors

(13) Enable regulatory framework for catalysing domestic private philanthropy

(14) Introduce presumptive tax regime to tax commercial receipts of General purpose utility NPOs

(15) Simplification of domestic TDS/TCS regime

(16) Remove compliance of issuing TDS/TCS certificates (barring certain exceptions)

(17) Introduce simplified TDS compliance for renting or purchase of immovable property from NRIs

(18) Exempt procedural requirements (like obtaining PAN, filing return, etc.) where SEP is triggered but treaty protection is available for non-residents

(19) Adopt Risk based Assessment in Tax Administration

(20) Introduce Group Relief for treating Parent and Subsidiary SPVs as one assessee for the purposes of Income Tax

(21) Introduce special integrated divisions for large taxpayers

(22) Improve Alternative Dispute Resolution mechanisms

(23) Introduce Mediation as an alternative dispute resolution mechanism

10.4. The other suggestions contained in our slide decks are largely on administrative side which can be addressed through Notifications, changes in Rules, Circulars, Guidelines, internal instructions etc to improve the administration of the new Bill, reduce litigation and compliance burden. They are briefly as follows :-

(1) Carve out Non-Fungible Tokens (NFTs) from onerous crypto asset taxation

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

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

(4) Address implementation issues for TDS on business perquisites

(5) Improve Tax certainty by pro-actively issuing clarifications on contentious issues

(6) Make Safe harbours Attractive (particularly for GCC activity)

(7) Improve interface with Central Processing Centre

(8) Timely disposal of rectification petitions and OGE to appellate orders and grant interest on refund till actual date of receipt

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

**BCCI Suggestion:** It is recommended, to collate the list of tax treaties that 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.

**Question:** Since the difficulty has arisen due to SC ruling on the issue of MFN in the case of Nestle SA[6], how can it be resolved by the Government?

**BCCI Response:**

11.1. The Bombay Chamber had furnished a detailed representation on the above issue in January 2024. The same is attached separately as **Annexure 5**. The issue is discussed briefly in following paragraphs.

11.2. Most Favoured Nations (MFN) clause which is present in India's DTAA with certain OECD countries[7], provides that if after the signature/ entry into force of the tax treaty with the first country (original treaty), India enters into a DTAA on a later date with a third country, which is an OECD member, providing a beneficial rate of tax or restrictive scope for taxation of dividend, interest, royalty, etc., a similar benefit should be accorded to the first country.

11.3. On application of the MFN clause, a controversy which arose was whether a separate notification by the Govt. of India (GOI) is required to confer the benefit of the MFN clause or if the provisions operate on an automatic basis as envisaged in the express language of the relevant treaty like France, Spain, etc. This issue was the subject matter of debate before the Hon'ble Supreme Court (SC) in the case of Nestle SA (supra) wherein SC ruled that even with reference to an autonomous MFN clause already agreed as part of existing treaty where treaty and protocol are both notified, the GOI is still required to issue a third notification under the respective DTAAs in order to give effect to the MFN clause (even in case where both the treaty and protocol are notified by CBDT) and that the same cannot operate on an automatic basis.

11.4. It is trite law that once SC pronounces a decision, it declares the law as if it always existed. Therefore, it applies to past tax years which can be reopened to give effect to the SC ruling.

11.5. The SC ruling has wide ranging ramifications on cases where MFN benefit under various tax treaties have been claimed since many years 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

[6] Civil Appeal No(s). 1420 of 2023, Decision dated 19 October 2023

[7] Illustratively, Netherlands, France, Switzerland, Sweden, Spain, Hungary

majority of the rulings in favour of application of such autonomous MFN clause without the need for a third Notification which held the field for a long time since 2002.

11.6. 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.

11.7. The difficulty caused by the SC ruling can be addressed by Government by 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. 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 would also provide certainty and transparency for both Indian and foreign entities involved in cross-border transactions.

11.8. It is thus recommended to collate the list of tax treaties containing 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). Following is an illustrative list:-

| **Nature of benefit for royalty/FTS** | **DTAAs impacted** |
|---|---|
| Make available clause for FTS | France, Hungary, Sweden, Spain, Belgium |
| No equipment royalty pursuant to India-Sweden DTAA | Hungary, France, Spain |

| **Interest related benefit** | **DTAAs impacted** |
|---|---|
| Interest arising in India shall be exempt from tax if the same is paid by the Government or local authority of India virtue of India-Italy | Netherlands, France, Hungary, Sweden |
| India-Ireland/Denmark - restricts source country from taxing the interest on loan extended or **guaranteed or insured** by the Government, a political sub-division, a statutory body or a local authority | France, Hungary, Sweden |

11.9. In fact, responding to industry representations, the Government 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. In this regard, we would like to highlight that Notifications giving benefit of MFN clause from an earlier date have been issued by CBDT in the past. Illustratively:

(a) Canada (where treaty benefit was granted retrospectively for any contract signed after 12 December 1988, vide a notification issued on 24 June 1992);

(b) France (where treaty benefit was granted retrospectively from 1 April 1995 for interest, and from 1 April 1997 for dividends, vide a notification issued on 10 July 2000); and

(c) Netherlands (where treaty benefit was granted retrospectively from 1 April 1997 for dividends and interest, vide a notification issued on 30 August 1999).

A similar retrospective notification being issued in the present case would provide certainty and transparency for both Indian and foreign entities involved in cross-border transactions and adopting such measures would reflect India's commitment to fostering an equitable tax environment.

**12. Liberalise Section 10(10C) of ITA providing exemption to the employees on VRS**

**Question:** Voluntary Severance pay for employees – Currently, s.10(10C) provides for exemption, where VRS is floated by the employer company. Whether there should be separate exemption where an individual employee leaves on his own dehors any scheme?

**BCCI Response:**

12.1. Section 10(10C) of the ITA is designed to provide relief to employees who opt for Voluntary Retirement Schemes (VRS) and to ensure that they are not unduly burdened by tax liabilities on their retirement benefits. This provision allows for the exemption upto Rs. 5 lakhs of compensation received by an employee from their employer upon voluntary retirement or termination of service. The benefit is alternative to relief from tax liability u/s. 89 of existing ITA. In other words, an employee can either claim exemption upto Rs. 5 lakhs on VRS compensation or relief u/s. 89 but not both. The relief u/s. 89 ensures that an employee is not pushed to higher tax bracket on account of receipt of lumpsum benefit in year of retirement.

12.2. One of the conditions to qualify for the exemption u/s. 10(10C) is that the voluntary retirement or termination of service shall be in accordance with any scheme or schemes of voluntary retirement which complies with certain conditions prescribed in Rule 2BA.

12.3. The benefit of exemption is thus restricted to the severance payments received under a VRS scheme implemented by the employer. Consequently, employees receiving severance payment under such scheme are eligible to claim exemption upto Rs. 5 lakhs. However, employee who chose to resign voluntarily from the company on account of any personal reasons, outside of any established scheme, do not qualify for the exemption.

12.4. But in such cases, where an employee receives severance payment upon voluntary retirement which is not covered under any VRS scheme, he may avail relief u/s. 89 to mitigate the higher rate of taxation. But relief u/s. 89 merely ensures that the employee pays tax as per marginal rate applicable to him. It does not relieve the tax burden on the severance compensation.

12.5. Hence, it is recommended that S. 10(10C) may be liberalised by deleting the condition of retirement or termination being in accordance with the VRS scheme. This would allow for a more equitable treatment of employees who, for various personal or professional reasons, choose to leave their employment. In other words, irrespective of whether the retirement is as per any VRS scheme laid down by the employer or not, exemption u/s. 10(10C) be made available upto a specified monetary limit with the existing condition that such employee cannot avail relief u/s. 89 on the same benefit.

## 13. Adopt Risk Based Assessment (RBA) in Tax administration:

**BCCI Suggestion**: RBA involves categorizing taxpayers according to their risk profiles, taking into account various factors such as the nature of their business, their previous compliance history, and other relevant indicators. This allows for targeted scrutiny and assessments on high-risk taxpayers or transactions with higher chances of tax evasion, while providing certain relaxations to low-risk taxpayers. Countries like the UK, Canada, and Australia have implemented risk-based assessment frameworks to modernize tax administration and improve compliance. It is recommended that tax authorities in India adopts a similar risk-based assessment strategy. This will improve the effectiveness of the tax system and aligns with the goal of enhancing the ease of doing business in India

**Question:** Please give a special note on Risk Based Assessment

**BCCI Response:**

13.1. The tax authorities in India have evolved in structuring its mechanism for selection of cases for scrutiny assessment, wherein significant shift has been made towards data-driven, transparent, and efficient tax administration in India. Presently, the Indian tax authorities adopt following techniques in order to select cases for detailed scrutiny:

- Computer Assisted Scrutiny Selection (CASS):

  CASS is a centralized, rule-based system that analyses risk parameters and taxpayer data to select cases for scrutiny. However, it does not impact any other processes for taxpayers including compliances such as filing of returns and statements. Typically, CASS aims to minimize manual intervention and ensure transparency in the selection process. CASS utilizes broad-based selection filters and 360-degree data profiling.

However, the parameters for selection of cases prescribed by CASS are very broad. For instance, this includes decline in gross/ net profit, presence of foreign transactions, etc. This can lead to the selection of cases that may not warrant scrutiny. Further, the system may lack the nuanced understanding of individual taxpayer circumstances, potentially overlooking legitimate discrepancies or misclassifying genuine issues as fraudulent.

For instance, CBDT vide Instruction F.No.225/72/2024/ITA-II dtd. 3 May 2024 prescribed Guidelines for compulsory selection of returns for complete scrutiny during FY 2024-25. As per the Instruction, one of the circumstances for selection of scrutiny is where the taxpayer has a recurring item of addition made in prior years exceeding a threshold of Rs. 25L (for taxpayers based in large cities like Mumbai, Delhi, Bangalore, etc.) or Rs. 10L for other cities. For this purpose, the fact that such addition is pending in appeal before a higher forum is not relevant as long as a lower appellate authority has upheld the addition in respect of such earlier year. All large corporates face compulsory scrutiny under this criteria regardless of absence of any other tax risk parameter.

- Non-filers Monitoring System (NMS):

  Implemented since 2013, NMS focuses on identifying individuals who have undertaken high-value financial transactions but have not filed tax returns. It analyses data from sources like TDS/TCS, Annual Information Return (AIR), and Centralized Information Branch (CIB) databases to prioritize actions against non-filers. Cases are classified into priority levels (P1 to P5), with P1 being the highest, to ensure graded monitoring and timely intervention. there have been instances where cases of non-filers are not uniformly monitored by Assessing Officers, leading to inconsistent enforcement.

- Project Insight:

  Project Insight is an integrated data warehousing and business intelligence platform aimed at enhancing the tax department's analytical capabilities. It utilizes big data analytics to identify non-filers and those underreporting income. The platform includes the Income Tax Transaction Analysis Centre (INTRAC) for data integration and analysis, and the Compliance Management Centralised Processing Centre (CMCPC) for enforcing compliance through various communication channels.

  However, the sheer volume of data processed may result in the overlooking of subtle patterns indicative of non-compliance, necessitating more refined analytical tools.

- Faceless Assessment Scheme:

  To further reduce manual intervention and ensure impartiality, the Indian tax department has implemented a faceless assessment scheme. Under this system, cases selected for scrutiny are assigned to a team of officers through a central computer system, and all communications are conducted electronically.

  However, taxpayers frequently encounter system downtimes, slow processing speeds, stringent file-size limits for document uploads, absence of adequate opportunity for response and other difficulties. These technical issues hinder the submission of detailed evidence, undermining the fairness of the assessment process.

13.2. Risk Based Assessment:

- While India's tax administration has made significant strides in adopting data-driven mechanisms like CASS, NMS, Project Insight, and the Faceless Assessment Scheme, these systems often operate on predefined rules and thresholds that may not fully capture the complexities of individual taxpayer behaviours. This can lead to both under-scrutiny of high-risk entities and over-scrutiny of low-risk ones.

- In this regard, the concept of risk-based tax assessments is emerging as a transformative approach in enhancing efficiency in tax administration. In this approach, rather than applying uniform scrutiny to all taxpayers, tax authorities segment taxpayers into categories based on their perceived risk of non-compliance. This risk is evaluated using a range of factors, including the taxpayer's industry, size, transaction complexity, historical compliance behaviour, audit history, and other relevant financial or operational data.

- This allows for targeted scrutiny on high-risk taxpayers while providing certain relaxations to low-risk taxpayers. Additionally, industries or transactions with higher chances of tax evasion are identified, enabling focused assessments on these high-risk areas.

- Countries such as Canada, United Kingdom and Australia, have adopted sophisticated risk-assessment systems in their tax administrations:

  - **Canada Revenue Agency (CRA)**:

    - The Canada Revenue Agency (CRA) has implemented the Integrated Risk Assessment System (IRAS), which starts with extensive data collection from tax returns, third-party information, and economic indicators. This data forms the foundation for analysis, wherein approximately 200 algorithms allocate risk scores and ranks groups. The risk profile will determine the audit approach taken for a particular taxpayer.

- The risk factors considered for this purpose are:
    - Audit history
    - Corporate governance (oversight)
    - Corporate structure (controls)
    - Openness and transparency
    - Unusual or complex transactions
    - Major acquisitions or disposals
    - Industry issues
    - International transactions
- Those considered to be high risk will be subject to a full compliance audit
- Taxpayers in the medium risk category may be subject to a full compliance or limited scope audit.
- Taxpayers who are considered low risk may be subject to a compliance assurance review to further validate the taxpayer's low risk ranking.
- The approach allows the CRA to focus its audit resources on the highest-risk cases of non-compliance within the large business population, and reduce the compliance burden for businesses that are considered low risk.

o **United Kingdom[8]:**

- BRR+ (Business Risk Review Plus) is a framework implemented by Her Majesty's Revenue and Customs (HMRC) in the United Kingdom (UK) for assessing tax compliance risk of a taxpayer.

[8] Process Flow chart - tcrm3100_flowchart.docx. Additional Sources: TCRM3100 - The Business Risk Review (BRR+): Overview - HMRC internal manual - GOV.UK; TCRM4100 - Risk Assessment: overview - HMRC internal manual - GOV.UK

- Introduced in 2019, BRR+ aims to evaluate where a business stands on the compliance spectrum, particularly determining if it qualifies as "Low Risk." This classification is based on the principle that even large and complex businesses can be considered Low Risk if they effectively mitigate inherent tax compliance risks through their behaviours and practices.

- The BRR+ process involves the following steps:

  - Considering the landscape in which the business operates, and it's potential impact on the inherent level of tax compliance risk the customer presents

  - For each applicable tax regime, considering the effect of the customer's behaviour on this inherent risk - does their relationship with HMRC, their Systems and Processes, Internal Governance and their Approach to Tax Compliance tend to increase or decrease this inherent risk

  - Considering the overall risk rating of the business

  - Agreeing the customer's overall risk status

  - Agreeing any action required to reduce the level of risk

- The BRR+ process includes understanding the business landscape, completing the BRR+ assessment, conducting risk assessment activities, engaging in risk working, and reviewing the BRR+ outcomes. This approach ensures that HMRC's response is proportionate and appropriately focused, aiming to develop an open and collaborative relationship with the customer to manage tax compliance risks effectively.

- The BRR+ process is conducted annually for businesses not classified as Low Risk. For those deemed Low Risk, a BRR+ is generally carried out on a three-year cycle.

- **Australia:**

  - Similarly, the Australian Taxation Office (ATO) applies a Justified Trust framework that evaluates governance, tax risks flagged to the market, tax outcomes, and transaction testing to establish a taxpayer's risk level.

13.3. Recommendation:

- It is recommended that tax authorities in India adopts a risk-based assessment strategy in line with international standards.
- Relaxations may be introduced for low-risk category taxpayers to encourage voluntary compliance. These relaxations could include simplified filing processes, reduced assessments, and expedited refunds.
- Further, the introduction of risk-based tax assessments will not only enhance the effectiveness of the tax system, but it also aligns with the broader goal of improving the ease of doing business in India.
- For implementing RBA, the tax authorities can also leverage from existing data on platforms like Project Insight, and develop sophisticated risk models that analyse taxpayer behaviour, transaction patterns, and historical compliance which in turn may help in identifying high-risk taxpayers more accurately.

**14. Generation of Employment**

**BCCI Suggestion:** It is recommended to increase the monthly salary limit for claim of deduction u/s 80JJAA from Rs. 25,000 per month to atleast Rs. 1 lakh per month.

**Question:** Bombay Chamber has suggested increase in s.80JJAA salary limit from Rs. 25,000 to Rs. 1 lakh per month. What are other suggestions for increasing employment?

**BCCI Response:**

14.1. In the recent years, the focus of the Government has largely been on promotion of manufacturing activity on the premise that manufacturing leads to large employment generation.

14.2. However, it may here be highlighted that the digital economy has fundamentally reshaped global economic systems. With the advent of robotics, AI and other capital intensive means of production, the employment potential of manufacturing sector has seriously deteriorated. Modern factories rely heavily on automation, limiting employment opportunities and wage growth. The true economic engines of today are small and medium-sized enterprises (SMEs), which generate more employment, innovation, and tax revenue than large corporations. As per a recent press report[9], SMEs account for 99.9 percent of all businesses in China, employ nearly half of all private-sector workers, drive innovation and provide 60 percent of the taxes collected. Small businesses invent 16 times more patents per employee than big corporations.

[9] Source: Unmade in America: Policy contortions of a misguided giant

14.3. Hence, India needs to invest in small businesses which are typically engaged in myriad sectors and not necessarily restricted only to manufacturing. Towards this end, incentives under various laws (including indirect tax, exchange control regulations, etc.) which are typically extended only to manufacturing sector may be extended to other industries as well such as service sector, tourism and hospitality, IT/ITeS and GCC, etc.

14.4. This would also be in line with the announcement by the Government in Budget (No.2) 2024 around a bold and ambitious direct benefit "employment linked incentives" through various schemes for new employment. These schemes are however not yet implemented.

14.5. Separately, in the direct tax realm, the following measures may be considered which were also recommended in our presentation before the Hon'ble Select Committee on 16 May 2025:

- Making Safe harbours Attractive (particularly for GCC activities) (Refer Slide 4)
- Expand transition of business losses and unabsorbed depreciation in Amalgamation for Service, Retail and other sectors (Refer Slide 16)

14.6. A detailed note on making safe harbours attractive (particularly for GCC activities) is enclosed herewith at **Annexure 6.**

14.7. A detailed note for expanding transition of business losses and unabsorbed depreciation in Amalgamation for Service, Retail and other sectors is enclosed herewith at **Annexure 7**.

## 15. Compliance Reduction

**Question:** What are Bombay Chamber's suggestions for reducing compliance burden for small businesses?

**BCCI Response:**

15.1. In recent years, small businesses in India have been facing an increasing tax compliance burden that often stifles their growth and operational efficiency – more particularly, after introduction of GST. The complexity of tax regulations and the necessity of maintaining detailed financial records can be challenging, particularly for micro and small enterprises that typically operate with limited resources. This may also discourage new entrepreneurs from starting their own businesses.

15.2. The Chamber recognises that the Government is actively engaging with the industry to reduce excessive compliance burden and also decriminalise various laws to improve ease of doing business in India.

15.3. The income tax compliances for small businesses involve compliances impacting their own tax payments & assessments (like payment of advance tax, S.A. tax, ITR, etc) and those involving taxes of their counterparties like TDS and TCS compliances. Our suggestions on relieving TDS/TCS compliances are separately provided at Slide 38 to 40. of our detailed background deck.

15.4. On the aspect of simplifying small business taxpayer's own tax payment/assessment, S.44AD of ITA 1961 (corresponding to Cl. 58 of ITB 2025) was introduced to provide for presumptive taxation of business income for small taxpayers (being individuals, HUF or partnership firm). This provision reduces compliance burden of maintaining books and litigation on itemised allowances & deductions.

15.5. However, the provision in its present form is very complex and strict making it onerous. For instance:

- <u>Multiple turnover limits for applicability</u> - The turnover limit for availing such presumptive taxation scheme is Rs. 2 Cr. Higher limit of Rs. 3 Cr applies if cash transactions are less than 5% of total receipts and payments.

- <u>Multiple presumptive rates for deemed income</u> - The business income is presumptively computed at either 8% of turnover or a lower rate of 6% if sales are through banking channels/electronic mode.

- <u>Taxpayer is expected to offer higher tax on actuals</u> – Unlike presumptive income provisions for non-residents where specified percentage of gross receipts is deemed to be income, s.44AD has two limbs viz. (a) 6%/8% of turnover or (b) higher income claimed to have been earned by the eligible taxpayer. The second limb is ambiguous whether it merely permits taxpayer to offer higher income at their option or mandates the taxpayer to offer higher income, if actual income (as may be corroborated by statement of affairs at beginning and end of the tax year) is higher.

- <u>Cooling/suspension Period</u> - Further, there is also a cooling/suspension period whereby a small taxpayer, having opted for presumptive taxation previously, chooses to pay lower tax on actuals in any year, such taxpayer is prohibited from adopting presumptive basis of taxation for 5 years succeeding such year in which income was offered to tax based on actuals. Such taxpayer who is suspended from availing benefit of presumptive taxation scheme is mandated to maintain books of account under S. 44AA and get them audited u/s. 44AB of the ITA 1961. Such cooling/ suspension person does not exist in the presumptive taxation provisions for non-residents who can elect between presumptive taxation and itemised net basis taxation (by maintaining books) on year-on-year basis.

15.6. In this respect, in order to make the presumptive tax regime simple, easy to follow, and more attractive, the following changes may be considered.

- Introduction of standard enhanced turnover threshold at Rs. 10Cr - Under MSME Act, the turnover limit for an entity to qualify as "micro" enterprises was recently enhanced from INR 5 Cr to INR 10 Cr through a Notification dated 21 March 2025 coming into effect from 1 April 2025. Hence, a "micro" enterprise with turnover between Rs. 2/3 Cr to Rs. 10 Cr is unable to avail the presumptive taxation benefit u/s. 44AD. Since the intent of s.44AD is to relieve compliance burden of maintaining books of account for small taxpayers, it is recommended to increase the turnover cap for presumptive taxation to a standard Rs. 10 Cr (irrespective of whether transactions are through banking channels or not) to align with "micro" enterprise classification under MSME Act. This will enable all micro enterprises to avail the presumptive scheme and reduce compliance burden for them.

- A single statutory rate of either 6% or 8% may be provided to determine quantum of income on presumptive basis in all cases.

- The cooling/suspension period of 5 years to avail presumptive income scheme, if lower income is offered in any year by maintaining books and getting them audited, may be removed. At par with non-resident presumptive taxation, the election between presumptive income and itemised net basis taxation (by maintaining books) may be made available on year-on-year basis.

15.7. Additionally, reference may also be drawn to the discussion on ADRs above whereby, as indicated, MSEs can be given respite from tax litigation by expanding scope of DRC to make available the benefit of the specialised window of negotiation to resolve tax disputes to all MSEs.

## 16. Omit disallowance for delayed payments to micro and small enterprises

**BCCI Suggestion:** S. 43B(h) of ITA 1961 [corresponding to Cl. 37(2)(g) of ITB 2025], as introduced by Finance Act (FA) 2023 disallows belated dues paid to Micro & Small Enterprises (MSEs) beyond time limit of maximum 45 days specified in s.15 of MSME Act and allows deduction in year of actual payment. It is recommended that Cl. 37(2)(g) of ITB 2025 may be omitted to revert to the position prior to FA 2023 amendment. Alternatively, extend time limit to claim deduction on actual payment till due date of filing return, at par with other payments covered this provision like government dues, bonus to employees, interest to banks, etc.

**Question:** If amounts payable to MSEs are excluded from actual payment condition, whether it will negatively impact MSEs?

**BCCI Response:**

16.1. While the insertion of S. 43B(h) vide Finance Act 2023 was intended to promote timely payments to MSEs, it has turned counterproductive for MSE entities on account of the following:

(a) Larger companies in private sector prefer to make purchases from non-MSE units to avoid disallowance. They also insist on surrender of Udyam registrations by MSE units to do business with them.

(b) This provision also impacts transactions between MSEs themselves (i.e MSE buyer and MSE seller) who may, being hard-strapped on the liquidity front, be unable to pay their MSE vendors on time.

16.2. This practical adverse outcome of the amendment defeats the object of the amendment. This issue also persists in the parallel provision proposed in clause 37(2)(g) of ITB 2025.

16.3. The turnover & investment limits for classification as MSE has been recently enhanced by 2-2.5 times vide Notification dated 21 March 2025 issued by MSME Ministry. With enhancement in the thresholds, many more enterprises will get covered by the enhanced limits and come within the scope of above provision disincentivising large private sector companies from doing business with MSEs.

16.4. It may be noted that penal provisions are already incorporated in the Micro Small & Medium Enterprises Development Act 2006 (MSMED Act) for non-payment or delayed payments to registered MSE units. S.15 of MSMED Act provides for time limit of maximum 45 days for payment of MSE dues. S.16 of MSMED Act provides for mandatory compound interest for delayed payments at three times of RBI notified bank rate. S.18 provides for facilitation of mediation of disputes related to MSE dues. S.22 provides for mandatory disclosure of MSE dues in audited financial statements of the buyers.

16.5. Since the amendment in section 43B of ITA 1961 (clause 37 of ITB 2025) by incorporating sub-clause (h) has turned counter productive for MSE taxpayers, it is recommended to be rolled back and omitted. Such omission shall not have any negative impact on MSEs as apprehended. The payments to MSEs are regulated by MSMED Act 2006 which will continue. On the other hand, the omission of clause 37(2)(g) of ITB 2025 will promote and assist MSEs in seeking business with large enterprises.

**17. Extend sunset date for claiming concessional tax rate of 15% for new manufacturing companies**

**BCCI Suggestion:** A concessional 15% tax rate to newly established manufacturing domestic companies, subject to certain conditions was introduced in 2019. One key condition is that the company must be set-up and registered on or after 1 October 2019 and commence manufacturing or production on or before 31 March 2023 (subsequently extended till 31 March 2024). However, considering COVID-19 pandemic and subsequent economic uncertainties, it is recommended to extend the sunset date for the concessional tax rate benefit to at least 31 March 2030. Prior announcement of longer sunset date provides sufficient lead time to make planned investment.

**Question:** Bombay Chamber has suggested extending sunset for 15% tax rate for new manufacturing companies from 31 March 2024 to 31 March 2030. Whether it will kill purpose for which such concessional tax rate was introduced?

**BCCI Response:**

17.1. At the outset, we may highlight that objective of introduction of S. 115BAB of ITA 1961 was to *"attract fresh investment in manufacturing and thereby provide boost to 'Make-in-India' initiative of the Government"* (Refer Press Release by Ministry of Finance dated 20 September 2019[10]).

17.2. While the objective of insertion of S. 115BAB was commendable, there were strict conditions which, inter alia, included:

- The company must be set-up and registered on or after 1 October 2019 and commence manufacturing or production on or before 31 March 2023.
- The company opts to claim such benefit in the first return of income filed after formation.

17.3. However, during the COVID-19 pandemic, companies faced significant challenges in setting up manufacturing facilities due to supply chain disruptions, labour shortages, and regulatory hurdles. This resulted in delays due to which the manufacture or production could not be commenced by 31 March 2023. Considering this, the sunset date was subsequently extended by FA 2023 from 31 March 2023 to 31 March 2024.

17.4. However, such extension was carried out at the last minute due to which, companies which had expected to not meet the original 31 March 2023 deadline and had thus not made the claim in the first return would have lost out on making such claim of the benefit.

17.5. Further, the extension for short duration at last minute discouraged some potential investors from initiating projects, which they might have done had the extension been announced earlier. In view of short timeline when the industry was barely recovering post

[10] Posted by PIB Delhi at 11:59AM

the COVID-19 pandemic, many businesses found it difficult to react and plan within this tight timeframe

17.6. In other words, the concessional tax regime could not meet the objectives as set-out by the Government at the time of its introduction.

17.7. Considering this, we recommend extending the sunset date at least to 31 March 2030. Prior announcement of longer sunset date provides sufficient lead time to make planned investment.

17.8. Extension up to 31 March 2030 will be in line with extensions granted to IFSC units, Sovereign Wealth and Pension Funds from 31 March 2025 to 31 March 2030 by Finance Act 2025 to make further investments with tax holiday.

17.9. It is relevant to note that many foreign investors will be considering India as a viable option for establishing large manufacturing facilities due to the following reasons.

- Amid global macroeconomic uncertainties arising from imposition of reciprocal tariffs by US, India is well-positioned as against its global competitors (such as China) suffering from a lower proposed tariff rate.

- Such extension will also promote the 'Make in India' initiative aligning with the China Plus One strategy. Moreover, 15% rate is in alignment globally accepted minimum tax rate as per Pillar 2 and is lower than corporate tax rates in various countries as below:

| **Country** | **Rate** |
|---|---|
| Indonesia | 22% |
| Malaysia | 24% |
| Philippines | 20% |
| Thailand | 20% |
| Vietnam | 20% |

17.10. Further, the concessional rate would not only help pivot the scaling of manufacturing operations in the MSME segment but would also contribute to the increase in employment generation if coupled with the benefits as articulated separately herein.

17.11. Separately, if the sunset date is extended, then a temporary relaxation may be provided for exercising option to manufacturing companies set up after FY 2024-25 and FY 2025-26 or those who missed to exercise option due to justifiable reasons.

**18. Address anomalies in presumptive taxation scheme for NR in electronics sector**

**BCCI Suggestion:** Unlike various other presumptive tax provisions applicable to an NR, a taxpayer subject to presumptive taxation scheme in electronics sector earning only income covered by new scheme is not excluded from applicability of minimum alternate tax (MAT) provisions. To align with objective of new scheme of providing certainty and reducing compliance burden, it is recommended to amend MAT provisions to exclude income covered by new presumptive regime.

**Question:** Please clarify in detail why above mentioned MAT exclusion is required?

**BCCI Response:**

18.1. The new presumptive scheme for non-residents u/s. 44BBD of existing Act for providing technology or services for electronic manufacturing in India is on the lines of other existing provisions like s.44B for shipping business, s.44BB for providing services for oil & gas exploration, s.44BBA for aircrafts, etc. The new presumptive scheme presumes a specified percentage of gross receipts (25%) as income of the non-resident thereby providing tax certainty and eliminating the compliance burden of determining exact quantum of income through itemised deductions. It also avoids litigation on determination of net income after considering expenses incurred in India and outside India.

18.2. Since the object of presumptive taxation is to avoid determination of net income, consequential exclusion is also provided in Minimum Alternate Tax (MAT) provisions u/s. 115JB of the existing Act which otherwise levies a minimum tax of 15% (plus applicable surcharge & cess) of "book profit". Explanation 4A of s.115JB clarifies that MAT shall not apply to a foreign company where its total income comprises solely of profits and gains from business referred to in other existing presumptive provisions i.e. s.44B, s.44BB, s.44BBA or s.44BBB and such income has been offered to tax at the rates specified in those sections

18.3. However, Explanation 4A has not been amended after insertion of the new presumptive taxation u/s. 44BBD by Finance Act 2025. This implies that MAT can apply to non-resident taxpayer who is covered by s.44BBD.

18.4. We acknowledge that despite MAT provisions applying in respect of S. 44BBD income, such NR taxpayer may, in most cases, not be subjected to any additional tax liability under MAT provisions. This is demonstrated by way of an illustration below:

| **Particulars** | **S. 44BBD Computation** | **MAT Computation** |
|---|---|---|
| Gross Receipts from Eligible Activity | Rs. 100 | Rs. 100 |
| Profits/Margin | Rs. 25 (as per S. 44BBD) | Rs. 50 (assumed) |
| Tax Rate (Including Cess and Highest Surcharge) | 38.22% | 15.6% |
| **Tax Amount** | **Rs. 9.56** | **Rs. 7.8** |

18.5. MAT may apply where the profit margin of NR taxpayer is very high – say, more than 61% - but practically there would rarely be such cases of high profitability.

18.6. However, the applicability of MAT provisions in all cases will require compliance by NR taxpayer of maintaining books of accounts and getting them audited so as to be able to compute "book profit" and tax liability under MAT provisions.

18.7. Such compliance burden defeats the intent of presumptive taxation provision of computing income at specified percentage of gross receipts, providing certainty and ease of doing business with India.

18.8. Sl No. 6 of Table under clause 67(2) and Cl. 206 of ITB 2025 contain similar provisions.

18.9. It is, hence, recommended to amend MAT Provisions [Cl. 206(c) of ITB 2025] to specifically exclude taxpayer covered by S. 44BBD of ITA 1961 [corresponding to Sl No. 6 of Table under clause 67(2)] from their applicability.

**19. Question:** What are suggestions for widening and deepening the tax base??

**BCCI Response:**

19.1. Background

- The Government has in recent past introduced various policy reforms/ measures which have resulted in a significant increase in the number of taxpayers as also the tax collections. This includes demonetisation, GST implementation (including e-invoicing under GST), automatic exchange of information between CBIC and CBDT, enlarging scope of TDS/TCS, automatic information exchange with international treaty partners, etc.

- Separately, even the Income Tax Department has taken various administrative measures such as increasing use of technology (such e-verification schemes, faceless assessments, appeals, penalty proceedings, etc.) Form 26AS, AIS and TIS capturing all relevant financial information of taxpayers, prefilling of income tax returns, updated return, TCS on high value goods (> Rs. 10 lakhs), awareness programs and launch of mobile app ("Aaykar Setu").

- These measures have resulted in increase in India's Direct Tax to GDP ratio from 5.2% in FY 2019-20 to 6.5% in FY 2023-24[11]. Similarly, the number of taxpayers paying taxes (either directly or through TDS) has increased from 8.7Cr in FY 2019-20 to 10.4Cr in FY 2022-23[12]. Even the number of income tax returns filed has increased from 6.72Cr in respect of FY 2020-21 to 8.09Cr in respect of FY 2023-24[13].

Certain measures that may be considered to widen and deepen the tax base are enumerated in ensuing paragraphs.

19.2. Improving Tax Compliance by focussing on Non-Filers through capacity building measures:

- While the number of taxpayers and tax filers has clearly increased, there is still a significant gap between the two wherein not all taxpayers are filing income tax returns. This highlights the need for targeted measures to encourage compliance, particularly among taxpayers engaged in high-value transactions. It is recommended that such taxpayers be urged to file their returns, and where these efforts do not yield results, the authorities should consider initiating appropriate legal proceedings, including penalties and enforcement actions, to ensure adherence to tax laws and regulations.

- To effectively address this gap, there is a pressing need to enhance the capacity of tax surveillance teams and data analysts. Presently, large volumes of data are generated through the system, however, there is insufficient capacity to fully analyse and act upon this information. Strengthening these capabilities will enable more focused and efficient enforcement such that the data generated by the system is taken by the authorities to its logical conclusion.

19.3. Detection of non-agricultural income being passed off as exempt agricultural income.

- As per a recent media report[14], High-net-worth individuals (HNIs) in India are increasingly investing in agricultural land and farmhouses to claim tax-exempt income under the Income Tax Act.

[11] Economic Survey 2024
[12] Source: CBDT time series data 2024
[13] Source: CBDT time series data 2024
[14] https://www.business-standard.com/finance/personal-finance/weekend-retreats-or-tax-retreats-india-s-elite-use-farmland-to-save-crores-125052000134_1.html

- Often non-agricultural income is also disguised as agricultural income.
- Accordingly, surveillance measures may be undertaken by the Tax Department (which it has done in few reported cases) like time based satellite mapping to detect such cases.
- Additionally, advanced data analytics can be leveraged to cross-reference land ownership data, income profiles, and transaction records to flag inconsistencies and potential misreporting.