

Gujarat Chamber of Commerce & Industry
Ahmedabad

Post Budget Memorandum –2008-2009

Direct Taxes

Preamble

At the outset, GCCI hails the increase in personal Income Tax exemption limit and restructuring the tax slabs for individuals. We also appreciate various other initiatives of the budget such as tax holidays for hotels, reduction of customs duty etc.

However in view of the buoyancy in revenue of Central Government, increased tax compliance and strong economic fundamentals, it would have been in the fitness of things if more measures at rationalizing the tax structure were undertaken.

Our considered views on various tax aspects and the provisions are enumerated below for your kind consideration.

1. Definition of “Charitable Purpose” – Section 2 [15] Clause-3

The definition of Charitable Purpose under Clause-3 of Section 2[15] of the IT Act has been widened to include “ the advancement of any other object of general public utility”. There was a large scale misuse of the provision of the clause and therefore the Finance Act of 1984 was amended. Simultaneously Section 11[4A] was introduced which recognized the fact that carrying on business activity by Charitable Trusts or Institutions was not a business and therefore permitted exemption in respect of even profits and gains of such business under specified circumstances.

The provisions of the said Section were further liberalized by the Finance Act-1992 providing for even profit or gain of business of a Trust or a Institution to be eligible for exemption if the business is incidental to attainment of the objective of the Trust and that separate books of accounts are maintained for the purpose.

The above provisions have been continued till date and the law is well settled on the subject.

The definition of charitable purpose which is being redefined in the current Budget proposals proposes to exclude such trust if it involves 1] the carrying on of any activity in the nature of trade, commerce or business or ii] any other activity to any trade etc. for a consideration , irrespective of the nature of use/application or retention of the income from such activity. It is apprehended that various associations, gymkhana, Chamber of Commerce, trade associations may be put to difficulty on interpretation of the above restriction. This, we believe, is not the objective of the proposed amendment. This amendment is going to seriously affect the charitable activities.

Therefore, we suggest kindly maintain the status-quo on the subject which prevailed prior to introduction of Finance Bill 2008.

2. Treatment of Securities Transaction Tax – Sections 36[1] [XV] 40[a] [ib] and 88[E] – Clauses 7,8, and 17

The Securities Transaction Tax was effectively introduced in 2004 in substitution of specified Long Term Capital Gain [exempted u/s 10[38] and Short Term Capital Gain [charged to tax at concessional rate u/s. 111A]

Subsequently the rate of STT has been increased in successive years. Therefore it was specifically provided that if the profit on sale of specified securities in taxable business income [which is taxed at normal rate] then STT charged on such transactions has to be allowed as rebate from the tax liability in respect of such profits as provided

in Section 88E and such STT would not be allowed in computing such business income as provided in Section 40[a] [ib].

The proposal to allow deduction of STT in computing income in cases where such gain is taxable as business income instead of allowing the same as rebate from the tax liability is unjust and unfair and contrary to the objective for which STT is charged.

Therefore, we suggest that the provisions of STT prior to the introduction of Finance Bill should be allowed to be continued.

3] Cash payment above Rs.20,000/- provisions of Section 40A [3] / 3A Clause 9:-

The provision of the above Section provide that payment in cash to a single person in a single day should not exceed an amount of Rs.20,000/- otherwise the same will be disallowed under the above provisions.

We may consider certain practical difficulties arising on account of the above provisions. Payment for freight to truck drivers, as per the trade practice has to be made in cash. Normally in the current high cost economy, freight charges per truck, per trip are bound to be above Rs.20,000/- There are many other trades and businesses which are conducted on cash basis. High value cash transactions are bound to be above Rs.20,000/-

In the given circumstances, it would be practically impossible to limit the cash payment transactions to a single person in a single day to Rs.20,000/-

Therefore it is suggested as follows :-

- The limit of Rs.20,000 should be altogether removed. Alternatively:-

- Restriction of making aggregate payment should be restricted to a particular transaction instead of to a single person for all transactions.
- Even if none of the above submissions are acceptable, the limit of cash payment be raised to Rs.one lac from the present Rs.20,000/-

4. Capital Gains on conversion of Foreign Currency Exchangeable Bonds [FCEB] Section 47 [Xa] and 49 [20] – Clauses 11 and 12

The rate of tax on Short Term Capital Gains is proposed to be revised from 10% to 15%. However, there is no proposal to clarify the circumstances under which the profit on sale of relevant equity shares/specified units should be regarded as capital gain or business income. The Instructions No.4 dated 15-5-07 issued by CBDT in this respect has raised more doubts and concerns rather than resolving the same.

1. Since the equity shares/units held for more than twelve months are treated as Long Term Capital Gains under the IT Act, it may be clarified in the Instruction that the Long Term Capital Gains arising on transfer of equity shares/ units is outside the scope of the Instructions and no attempt should be made to treat such Long Term Capital Gain as business income.
2. For Short Term Capital Gains arising from other than the above circumstances, than the tests of instructions issued by CBDT would apply and the same may be examined for business income or capital gain.

We believe, if the above approach is adopted, then, the uniformity in approach in assessment could be achieved, without causing undue hardship to the genuine investors. Such an approach would also bring transparency in tax administration in the matters of assessments and determination of tax liability of the assesseees.

5. Minimum Alternate Tax [MAT] Section 115 JB Clause 20

For the purpose of levy of MAT, definition of 'book profit' is proposed to be amended to include with retrospective from 1-11-01 various items in the book profit. The proposal provides that deferred tax as well as interest charged under the Income Tax Act are also to be added back to compute the amount of book profit with the result, even these items will be subjected to MAT.

The proposal for adding back the interest component to book profit and thereby artificially increasing the book profit goes against the very concept of MAT, as MAT was introduced on the ground that certain companies were not paying income-tax on account of incentives etc. available under the Act but were distributing dividends, as such companies were having distributable profit [book profit] deferred tax provision is not payment of Income Tax or provision for payment thereof.

Therefore, it is suggested that the proposed amendment may be withdrawn.

6. Dividend Distribution Tax – Section 115 0 Clause 21.

The proposed amendment though in the right direction, is only partial in nature, as it only applies to dividend received by holding company from its subsidiary and that too it applies only at one level. Therefore, double taxation of dividend continues in all other situations of inter-corporate receipts and distribution of dividends. Inter-corporate share holding is almost inevitable for commercial as well as legitimate business needs.

Therefore, it is suggested that the amendment may not be made limiting in nature at only one level, but may cover all levels of holding for reasons given here under:-

A] For Indian Industry which has been exclusively using the holding subsidiary/joint venture structure extensively due to commercial and

regulatory consideration as the same prohibits carrying on the group business in a single entity, the multi-point tax in the hands of subsidiaries/group companies and the holding companies leads to additional tax incidence.

B] Also, subjecting the same income to double taxation goes against the trends of natural justice, which provides for a single point tax incidence.

C] Section 47, exempts transfer made by a 100% subsidiary company to a holding company or vice versa from the levy of capital gains tax. The Act also allows inter group transfer of capital assets.

D] Even globally there are countries who have exempt tax on dividend distributed by the subsidiaries as also have allowed set off under their respective laws.

Therefore, it is suggested that the earlier provisions of Section 80M which provided for mechanism to avoid double taxation be re-introduced.

7] Due Date of furnishing Return of Income/Fringe Benefit Sections 115 WD[1] and 139 [1]

The due date for furnishing Return of Income has been preponed from 31st October to 30th September of the year.

Two fold problems are envisaged on account of the change which are as follows :-

1. Companies are required to hold their Annual General Meeting by 30th September of the year.
2. Assesses generally pay 'Bonus' at the time of Diwali, which is eligible for deduction.

Usually the staff of a company remains busy for preparation for the Annual General Meeting. Secondly if the return of Income is filed by

30th September payment of bonus would become ineligible for deduction as diwali invariably falls after 30th September. Therefore, it is submitted that the earlier date for filing of Return of Income i.e. 31st October be reintroduced.

8] Adjustment to Returned Income/Fringe Benefit Sections 115 WE[1] and 143 [1] – Causes 25 & 29.

Prior to 31st May,1999 under Section 143 [1] the Assessing Officers were empowered to make specified adjustments to the returned income. However in view of the difficulties in administering the provisions, the said powers were withdrawn w.e.f 1st June 1999.

The same logic and reasons still prevail and therefore in our view, there is no necessity for reverting back to the old system.

9] Order of stay on Demand – Section 254 [2A] Clause 46

It is now proposed to provide that the order of stay of demand shall stand vacated after the expiry of 365 days, if the appeal is not disposed off by that time and even the delay is not attributable to the assessee.

This is highly unjustified as it seeks to punish the assessee for no fault of his/her. Therefore, it is suggested that the amendment may be withdrawn.

10] Validity of Notice – Section 292 BB – Clause 52

A new Section is proposed to be introduced w.e.f 1st April,2008 providing that once a assessee has appeared in the proceedings, or cooperated in any enquiry, he will not be allowed to raise objection with respect to late, non-service or improper service of a notice.

This is unfair and unjust and amounts to prejudging the matter. Therefore, it is suggested that the provisions should not be introduced.

11] Commodities Transaction Tax - Clause 97 to 116 – Chapter VII of Finance Bill

The Commodities Transaction Tax is proposed to be levied on the lines of STT. It may be recalled STT was introduced in lieu of Capital Gains Tax/ reduction in rate of Capital Gains Tax. Thus, STT was never a separate levy for revenue purpose. Likewise CTT has nothing to do with income. Therefore, it is suggested that the levy of CTT be withdrawn.

INDIRECT TAXES

1. Exemption to Battery Powered Two Wheelers

It is matter of great satisfaction that in the Union Budget proposals for 2008-09 has proposed reduction of Central Excise Duty on battery powered car from 8% to nil. The rationale behind the move seems to reduce dependence on petrol and diesel driven vehicles and thereby help reduce consumption of petrol and diesel.

The same rationale may be applied to battery powered two wheelers also. This would encourage use of pollution free vehicles and thereby help in creating a eco-friendly environment.

2. Reduction of Customs Duty on Melting Scrap of Stainless Steel.

In light of the Union Budget proposals and the corresponding notification No.21/2008 dated 1-3-08 Customs Duty on melting scrap of iron and steel has been reduced from 5% to nil. However the said notification does not cover melting scrap of stainless steel.

Since melting scrap of stainless steel is an item of mass consumption, we would suggest that Customs Duty on the said product may also be reduced to nil.

