6th February, 2021/18582



To
**Shri Bhupendra Yadav**
Hon'ble Member of Parliament
C 1/12, Pandara Rd,
near Bikaner House, Pandara Park,
India Gate, New Delhi - 110001

Respected Sir,

At the outset, we would like to place on record our sincere appreciation to the government for comprehensive and robust response to the raging COVID-19 pandemic. We congratulate Government for the development-oriented budget and in particular not increasing the tax rates and focusing on Infrastructure development.

Following are some of the issues to be raised.

1. **Tax rates for non-corporate tax payers**
   Tax rates / MAT rates for corporates have been reduced post the implementation of Taxation Laws Amendment Act, 2019.

   However, the tax rates, for non-corporates such as LLPs & AOPs and for individuals earning high income, continue to be exceedingly high.

   Capital gains, other than those under section 111A, 112A or 115AD, are also subject to high surcharge applicable to individuals.

   It is therefore suggested that the rate of tax (including Surcharge and cess) for all non-corporate entities (including LLPs and AOPs) should be brought down to 25%.

2. **Reopening of Cases**
   It is a welcome step that Time limit for reopening of income tax assessment cases has been reduced to 3 years. Benefit of the same should also be given to the GST assesses.



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3. **Section 37 – Corporate Social Responsibility expenditure incl. COVID care expenses Explanation 2 in sub-section (1) of section 37 provides that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession and deduction shall not be allowed.**

As per the Companies Act, 2013, it is mandatory for specified companies (as per Section 135) to spend 2% of their average profits towards Corporate Social Responsibility. These expenses are all connected to social and charitable causes and not for any personal benefit or gain. It is, therefore, fair and equitable to allow the same as business expenditure. There is no bar on allowability of CSR expenditure falling under other sections like 35, 35AC etc.

Granting a specific tax incentive in respect of such CSR expenditure **incl. COVID care, vaccination for prevention of public at large, as also the employees of such company,** would not only prove to be a welcome relief to companies during the challenging times of pandemic, but it would also go to lighten the burden on Government in regret to their obligation for incurring such expenditure.

**Suggestion:**

There is a strong need to revisit this provision and companies should be allowed 100% deduction of CSR under section 37 so as to provide such **CSR expenditure incl. COVID care and vaccination for effective prevention**, for the benefit of the public at large, including employees of the respective companies and their families, shall be allowed as 100% tax deduction in the computation of taxable income of companies. If at all required, necessary safe guards may be incorporated.

4. **Section 23(5) - Tax on unsold properties held as stock in trade**
Section 23(5) provides that in respect of unsold property that is held as stock-in-trade after a prescribed period, it is taxed on notional rental income basis.

Mainly, it attracts builders and developers who are struggling with various practical issues inclusive of having a large unsold property. Section 23(5) providing for deemed rental income and making it



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taxable after two years of property construction appears to be harsh to genuine developers who are unable to dispose off their stock in the slump. Therefore, once a builder demonstrates that he has not been able to sell despite genuine efforts to sell, the deeming provisions may not be made applicable.

In many cases, the builders pay interest on funds borrowed for construction. Further, Section 71(3A) provides for ceiling of Rs. 2 lakhs for set off of loss under the head house property against any other head of income. Combined effect of application of sections 23(5) and 71(3A) is proving double sufferings for the builders/ developers.

**It is suggested:**

(a) to amend section 71(3A) so as to exclude provisions of section 23(5).

(b) that Real Estate business entities be exempted from the provisions of sections 23(5) and 71(3A) for at least five years.

(c) that for the purpose of section 54 and 54F, the time limit for construction of a house may be increased from 3 years to 5 years. If the funds are regularly paid by the buyer and construction of the house is in progress, the delay beyond 5 years may also be allowed.

(d) that provisions of section 72A allowing set off of unabsorbed losses and unabsorbed depreciation be allowed to real estate sector also to enable consolidations and mergers.

**5. Section 54EC –**
**a) Time Limit for investment in specified bonds**

**b) The section restricts exemption for investment in capital gains bonds up to Rs. 50 Lakhs**

a) Time limit for investment in specified bonds is presently 6 months from the date of transfer.

- In many cases, taxpayers are not aware about exemption provision and comes to know about it only when they approach their tax consultant at the time of filling of ITR. By this time, 6



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months period is already over and thus the taxpayer inadvertently loses the benefit of exemption.

- ❖ Present time limit expires exactly at 6 months from the date of transfer. Due to this, even an otherwise knowledgeable taxpayer is also forced to be very cautious about exact date and sometimes he may miss it unintentionally.

- ❖ Bringing the time limit upto the due date of filling of ITR shall also bring parity with section 54/54B/54F etc. where taxpayer is permitted to deposit the money in Capital Gains Account upto the due date of filing of ITR.

- ❖ In number of transactions, there is some difference in dates of actual handing over of possession, submission of documents for registration of transfer, actual date of registration and even a subsequent modification of registered document due to demand of additional stamp duty. All these dates, though may fall in the same year but still may differ from each other, creating an unnecessary dispute regarding actual date of transfer and thereby time limit of 6 months. If the date of investment in specified bonds is made up to the due date of filling of ITR, such disputes can be saved.

b) This will also help the Government in generating funds at much lesser cost, especially when the government is burdened with high cost of borrowing. This step will also will provide impetus to the infrastructure sector. Further, since the lock in period has now been increased to 5 years, if the limit is also increased, the government will have more funds for a longer period at lower cost.

**Suggestion:**

a) It is suggested to amend section 54EC so that time limit for investment in specified bonds may be allowed upto the due date of filing of ITR.

b) The ceiling for making investment in specified assets be increased from Rs. 50,00,000 to Rs. 1,50,00,000.



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**6. Section 206C – Concerns arising due to inclusions in TCS provisions to be addressed**

Clarification regarding the amount/sale consideration on which TCS is to be collected/charged under provisions of section 206C(1H).

Section 206C(1H) provides that every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding Rs 50,00,000 in any previous year shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 % of the sale consideration. Clarification is required in case of receipts when sale and purchase is made from a same person.

There is a possibility that certain two taxpayers say "A' and 'B' are buyer and seller of each other's goods. Eg let's assume A has sold goods worth Rs 5 crore to B and B has also sold some other goods worth Rs 4.75 crores to A. Now, in this case, clarity is required regarding the amount on which tax is to be collected at source by seller A i.e. on sale consideration of Rs 5 crore or net remittance of Rs 25 lakhs or not required at all as receipt during the year is less than Rs. 50 lakhs.

**Suggestion:**

It is suggested that suitable clarification be issued, or legislative amendment be made so as to clearly specify the amount on which tax is to be collected by the seller especially in a case when sale and purchase takes place to and from a same person.

We request your good self to consider this memorandum favourably.

We will be happy to present ourselves for any explanation and clarification that may be required by your honour.

With warm regards,

Natubhai Patel
President



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