The Chamber of Tax Consultants
Estd. 1926
ज्ञानं परमं बलम्
Mumbai | Delhi

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6th August 2024

To,

1. Smt. Nirmala Sitharaman,
Hon'ble Finance Minister of India,
North Block,
Delhi – 110 001

2. Shri Ravi Aggarwal,
Hon'ble Chairman,
Central Board of Direct Taxes, North Block,
Delhi – 110 001

Respected Madam / Sir,

Sub : Representation arising out of certain proposals of the Finance (No. 2) Bill 2024 presented on 23rd July, 2024.

The Chamber of Tax Consultants, established in 1926, is one of the oldest non-profit organizations of tax practitioners, having Advocates, Chartered Accountants and Tax Practitioners as its members spread across Pan India. The Chamber is on the cusp of its Centenary year which will be commencing from July 2025. Many senior tax professionals who regularly appear before ITAT, High Courts and the Supreme Court are its Past Presidents. The Chamber has been making regular representations before various

government agencies. The Chamber regularly takes up initiatives to act as a bridge between stakeholders and concerned regulatory bodies in order to convey and help in resolving genuine grievances or effectively implement the laws.

We compliment the Hon'ble Finance Minister for presenting a balanced budget for the year 2024-25 on 23rd July, 2024. However, certain provisions in relation to amendments proposed in the Income-tax Act, 1961 have some difficulties arising. We are pleased to bring out the difficulties that are likely to arise and are also giving our suggestions in respect of the same. Considering the paucity of time, we have covered only few of the crucial amendments in our post budget representation attached herewith for your kind consideration. We request you to consider the suggestions and if felt appropriate, make suitable modifications while passing the Finance (No. 2) Bill 2024.

We look forward for your kind consideration to the suggestions made. We shall be pleased to explain the suggestions personally if we are given an opportunity for the same.

Yours Sincerely,

For **The Chamber of Tax Consultants**

Sd/-	Sd/-	Sd/-
Vijay Bhatt	Ketan Vajani	Apurva Shah
President	Chairman	Co-Chairman

Law and Representation Committee

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1. House Property

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
1.1	Clause – 11 of the Finance Bill seeks to insert Explanation – 3 to section 28 of the Act. The proposed Explanation is sought to be inserted so as to provide that any income from letting out of a residential house or a part of the house by the owner shall not be chargeable under the head "Profits and gains of business or profession" and shall be chargeable under the head "Income from house property" The Memorandum explaining the provisions states that offering the income by the assessee under the head of business income results in reduction of tax liability by showing the income under the wrong head.	Presently there are many cases where the assessee including corporate entities are engaged in the business of letting out residential houses for the purpose of earning rental income. This activity is the primary business activity of the assessee and is in fact one of the main objects as per the Memorandum of Association of the corporate entities. Such activities are carried out as an organised activities by the assessee. The activity not only requires letting out the premises on a bare shell basis but also includes provision of various allied incidental services like regular maintenance, housekeeping, security services, services of servants, gardeners, cooks and such other staff. In a case where the activity is an organised activity, it is certainly in the nature of business. The primary purpose is to provide services of accommodation and the letting out of the property is just a small part of the entire set of activities. The judicial forums have also accepted the principle that in case of organised activity, the same is in the nature of business and should be assessed as such.	In view of the difficulties explained, we suggest that the proposed Explanation – 3 to section 28 is not necessary and the same is in fact counter- productive to various objects of the government. We, therefore, suggest that the said amendment may please be dropped.

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		The services provided by the assessee by letting out the properties with the incidental services also promotes the tourism in the country. Many of the tourists may prefer to have better privacy than available in a hotel and they prefer such bungalows or such other accommodation available with the incidental services for their stay while they are touring. Also at times it is economical for the tourists and therefore they prefer such accommodation as compared to hotels. It may also be appreciated that such activities also generate employment especially for the unskilled labour like security staff, cooks, gardeners etc. By virtue of the proposed Explanation – 3, the assessee will be deprived of the deduction of the actual expenses incurred for the purpose of carrying out the activities which is in the nature of business activities. The standard deduction of 30% as available under the head of Income from House Property may not be sufficient to take care of the actual expenses incurred by the assessee. As such, it will eventually result in	

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		taxing an income which is not earned at all and will contravene the concept of tax to be levied on real income only. As regards the concern expressed in the Memorandum that the tax-payers are taking wrong tax advantage, we humbly submit that the question of taxing under the correct head of income is factual question and in case if the activity of any particular assessee is not in the nature of business activity, the present law is good enough to tax the same under the Income from House Property. However, to make it mandatorily to be taxed under the head of Income from House Property is not in accordance with the sound principles of taxation.	

2. Capital Gains

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
2.1	Clause 20 of the Finance Bill proposes to amend 2nd proviso to Section 48 of the Income Tax Act – to restrict the benefit of indexation to transfer of Capital asset prior to July 23, 2024	The proposed amended is not rational on account of: 1) capital appreciation should be taxed beyond inflationary increase in price, so as to tax on real income and not on price appreciation due to inflation, which only maintains purchasing power parity of the owner and in economic sense the wealth of the owner has not increased. 2) A person who has got higher returns on investment is rewarded by lesser tax rate and the compensatory cost is paid by the person who has got inflationary to moderate return on his investment has to pay higher tax – as for them indexation was more beneficial as compared to low tax rate. 3) It is creating an anomaly in the taxation system which may not be good.	The taxpayer should be given an option of whether to opt of lesser tax rate without indexation or higher tax rate with indexation.

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2.2	Clause19 of the Finance Bill proposes to amend Section 47(iii) of the Income Tax Act – to restrict the gift exemption to Individual and HUF and thereby, as per EM, any transfer of capital asset by corporate without consideration would trigger capital gains tax.	A general proposition it is a welcome amendment. However, an unintended concern is any corporate taxpayer donating a capital asset to a charitable entity will be liable to capital gains tax considering the fair value of the property as the full value of consideration accruing to the donor entity It would be detrimental to the interest of charitable institutions that a corporate donor of land or building or any capital asset would be liable to capital gains tax and would be out of pocket for making a donation to charity.	To avoid this unintended off-shoot of the amendment, it would be helpful to clarify, that donation of capital assets to registered charitable entities u/s 12A, 12AA, 12AB by corporate entities (including firms) is not hit by the amendment to S. 47(iii) and continues to be exempt from capital gains tax (similar to exemption provided from applicability of Section 56(2)(x)).

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2.3	Clause 21 of the Finance Bill proposes to amend Section 50AA of the Income Tax Act to inter alia bring unlisted bonds and debentures within the scope of section 50AA	As S. 50AA would now apply to unlisted bonds and unlisted debentures, S. 50AA would also apply to compulsory convertible debenture (CCD). These instruments are generally quasi equity in nature and most of the time do not have interest coupon and are not entitled to redemption at a premium or otherwise. The objective of S. 50AA to bring all debt instruments at par and not to permit benefit of long term capital gains tax rate.A quasi equity instrument which is very often used in intial funding rounds or start-ups or even established entity when the valuation (conversion ratio) is based on a future event, it seems to be unintentional to cover CCD within the ambit of Section 50AA.	CCD should be excluded from the scope of S. 50AA and OCD not carrying any redemption premium should also be excluded from the scope of S. 50AA.

3. Buy-Back provisions

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
3.1	Buy-back of shares from the shareholder in accordance with Section 68 of the Companies Act, 2013, is proposed to be treated as 'Dividend' under clause (f) to Section 2(22) of the Act. Further, the consideration received on buy-back would not be treated as full value of consideration for computing capital gains. (Proposed amendment in Section 46A). Further, it is proposed in Section 57 that no deduction shall be allowed from dividend income on account of buy-back of shares.	The treatment of amount received on buy-back of shares as dividend income and consequent, non-allowability of any deduction from such income, would result in taxation of such income at gross level. Even the cost of acquisition of shares bought back would not be deductible. Further, the proposed amendment in Section 46A of the Act would result in creation of loss under the head "Capital Gain". The buy-back shall be treated as transfer u/s. 2(47) of the Act. However, the full value of consideration shall be NIL whereas the cost of shares bought back will be at actuals. If a taxpayer does not have taxable capital gain in the year of buy-back or in the subsequent year, then such capital loss would lapse.	1. The cost of shares bought back should be allowed as deduction u/s. 57 of the Act. Or, 2. The dividend income on buy-back of shares be treated as "Capital Gains".

4. TDS & TCS Provisions

Sr. No.	Proposed amendments	Difficulties/Obstacles/ Hurdles either Interpretative/ Administrative/otherwise	Suggestions
4.1	Section 194T is inserted by the Finance Act, 2024 w. e. f. 1st April, 2025 which states as below: "(1) Any person, being a firm, responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, shall, at the time of credit of such sum to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier shall, deduct income-tax thereon at the rate of ten per cent. (2) No deduction shall be made under sub-section (1) where such sum or the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed twenty thousand rupees during the financial year."	The memorandum explaining rationale for introduction of provision does not lay down any rationale for introduction of Section 194T. There could be three reasons, 1) To have a trail, 2) To increase the tax base and 3) To have regular tax flow. As we understand, the details of payments to partners covered by this provisions are captured in the ITR of Firms. Hence, the entire trail is available. And since, all the details are available with department including PAN of the partners, the question of increasing the tax base does not arise. Further, the partners are liable to pay advance tax as per the relevant provision.	The proposed section requires to be dropped.
		Remuneration of a partner depends on the profitability of the firm, which is practically determined once the books of the firm are finalised for the financial year. Hence, the remuneration (which is subject to section 40(b))cannot be finalised before the due date for depositing of TDS for the last quarter of the financial year which is 30th April.	The proposed section requires to be dropped.
		It is an usual practice to compute partners' remuneration of the firm at the end of each financial year, as maximum allowable remuneration depends on the book profits of the firm for that financial year. However, for instance, let us say, if a partnership firm starts giving fixed remuneration per month, deducts 10% on the same as per section 194T and at the end of financial year remuneration paid to such partner is more than the remuneration that can be given as per book profits for that financial year, as the same is restricted as per provisions of Section 40(b). In such a case, there will be a	The proposed section requires to be dropped.

		mismatch between amount on which tax is deducted and corresponding income offered by the partner. This will lead to unnecessary compliances /litigation in the hands of partner.	
		If not dropped. Whether Section 194T is applicable from FY 2024-25 or FY 2025-26, as the provisions of Section 194T will take effect from 1st April 2025?	Since TDS provisions are applicable from the date of introduction, the same should apply from FY 2025-26. However, a clarification in the same would avoid confusion.
		Whether the partnership firm needs to deduct TDS under section 194T or section 195, in case of payment of salary, remuneration, commission, bonus and interest to non-resident partner?	Since, the proposed section overlaps with section 195, clarification required.
4.2	Vide Finance Bill, 2024, proviso of (iv) proviso to section 193 of the Act is amended w. e. f. 1st October, 2024 to include Floating Rate Savings Bonds, 2020 (Taxable) or any other security of the Central government or State Government as the Central Government may, by notification in the Official Gazette, specify in this behalf. This means tax shall be deducted at source, if any interest payable on following securities of the central or state government exceeds rupees ten thousand during the financial year: a. 8% Savings (Taxable) Bonds, 2003 or	Whether limit of interest payable of Rs. 10,000/- is applicable with respect to each of the securities mentioned in amended provision?	A clarification would avoid confusion.

	b. 7.75% Savings (Taxable) Bonds, 2018 or c. Floating Rate Savings Bonds, 2020 (Taxable) or d. Any other security of the Central Government or State Government as the Central 64 Government may, by notification in the Official Gazette, specify in this behalf;		
		Whether interest paid/payable on Floating Rate Savings Bonds, 2020 (Taxable) from 1st April, 2024 till 30th September, 2024 be counted for the purpose of computing limit of Rs. 10,000/-?	A clarification would avoid confusion.
4.3	Vide Finance Bill, 2024, sub-section (2B) of section 192 of the Act has been amended w. e. f. 1st October, 2024. The employers can consider tax collection at source (i. e. TCS) paid by employees during the same year for the purpose of deduction of TDS.	Whether TCS paid by employees on or before 30th September 2024 will be considered for the purpose of deduction of TDS under section 192?	A clarification would avoid confusion.

5. Reassessment Provisions

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
5.1	Clause – 44 of the Finance Bill seeks to substitute sections 148 and 148A of Act with effect from 1-9-2024. As per sub-section (4) of the proposed section 148A, the provisions of section 148A shall not apply to income chargeable to tax escaping assessment for assessment year in the case of an assessee where the assessing officer has received information under the scheme to be notified under section 135A.	Section 148A of the Act lays down the procedure before issuance of the notice u/s. 148. The mechanism as applicable provides an opportunity to the assessee to explain his case and clarify the doubts prevalent prior to the notice u/s. 148 getting issued. The primary object of section 148A is to have a validity check prior to issue of notice u/s. 148. In a case where the information received by the department is either factually incorrect or a situation where though the information is correct, the same has not lead to any income escaping assessment in the case of the assessee, the reassessment proceedings can be avoided. The section 148A provides an opportunity to the assessee to explain his case and avoid the reassessment proceedings if the same is not actually required. The provisions of section 148A of the Act had been introduced with effect 1-4-2021 with a view to give statutory recognition to the guidelines laid down by the Hon'ble Supreme Court in the case of ITO v. GKN Driveshafts (India) Ltd.259 ITR 19 (SC). Under the scheme of reassessment prior to	In view of the difficulties explained, we suggest that the sub-section (4) of the proposed section 148A may please be omitted since it results in depriving the assessee of a valuable opportunity to avoid unnecessary ordeal of reassessment where there is no income escaping assessment as a matter of fact.

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		amendment by the Finance Act, 2021, the assessing officer was required to provide the copy of the reasons recorded to the assessee and the assessee was allowed to raise objections against the same so as to avoid the reassessment if it is not required. This procedure has been now enacted by virtue of section 148A with effect from 1-4-2021. The section acts as a natural check against abusive use of powers given to the assessing officer to make reassessment in a case where the same is not justified for various reasons. It is certainly possible that even in case of collection of information in a Faceless manner as provided under section 135A of the Act, there may be some factual errors and also there may be a situation where the income has not actually escaped assessment either on facts or on proper appreciation of legal provisions. Considering this, it is absolutely inappropriate to presume that once the information is collected u/s. 135A, there is certainty of income having escaped assessment. Such a presumption is more likely to be result in an unwanted	

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		reassessment without any gainful result for either revenue or the assessee. Under the situation, it will be appropriate to let the validity check go through and only after going through the validity check issue the notice for reassessment in a case where it is necessary. This will prevent the waste of time for the revenue and will also permit the assessee to avoid the reassessment where actually it is not necessary.	
5.2	Clause – 46 of the Bill seeks to substitute section 151 of the Income-tax Act, providing for sanction for issue of notice u/s. 148 and 148A, with effect from 1-9-2024. As per the existing section 151 of the Act, the sanction is required to be obtained from Pr. CIT, Pr. DIT, or CIT or DIT in cases where the notices are issued within the period of 3 years from the end of the relevant assessment year. Further in cases where the notices for reassessment are issued beyond the period of 3 years from the end of the assessment year, the sanction is required to be obtained from Pr. CCIT, Pr. DGIT or CCIT or DGIT. As against the above authorities specified as the sanctioning authorities, the substituted section 151	The purpose of section 151 is to provide a confirmation by a superior authority who will independently confirm the need to take up a case for reassessment. The sanction by higher authorities act as a preventive measure against abusive use of powers available with the assessing officer. Sanction by senior most authority is a required filter in the process. The Senior most of the department will be mindful of the legal intricacies and his approval is a necessary safeguard for the reassessment proceedings. Delegating the powers of sanction to the officers of the rank of Addl. CIT or Jt. CIT is not in good spirit considering the fact that these authorities are ultimately the supervising authorities	It is suggested that the present provisions of section 151 have been working well and there is no need to make any amendment in the said section. Therefore, we recommend to drop the proposed amendment to section 151 of the Act. We also recommend that at least in the case where the reassessment has been initiated beyond the period of three years, the sanction must be provided to be obtained from Pr. CCIT or Pr. DGIT as applicable as of now.

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	seeks to specify Additional Commissioner or Additional Director or Jt. Commissioner or Jt. Director as the authorities for sanctioning the issue of notices for reassessment.	for conduct of the assessment proceedings. It is also observed as a matter of practice that these authorities have revenue target of collection as one of their official duties. Under such circumstances, it is anticipated that the sanction given by the Addl. CIT or Jt. CIT will be more on account of revenue targets rather than being driven by the merits of the case. The tax payers at large will also look at the sanction as an empty formality where the highest officer of the department is not consulted. This will result in loss of confidence of the tax payers in the tax administration. It is also seen that the proposed section does not provide for higher level of sanction where the reassessment is initiated beyond the period of three years from the end of the assessment year. This is in contrast with the present provisions which have the mechanism of obtaining the approval from higher authorities for the reassessment beyond three years.	

6. Block Assessment Provisions

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
6.1	Clause – 49 of the Bill seeks to substitute the Chapter XIV-B in the Income Tax Act. The Chapter XIV-B seeks to reintroduce the provisions in relation to Block Assessment in cases of search & seizure after 1-9-2024.	The change in the mechanism of the search related assessment is unwarranted considering the fact that the entire scheme has been changed just before three years vide Finance Act, 2021. The result of the present scheme are yet to be seen and before the same is stabilised the entire scheme is changed. Frequent changes in the scheme of tax are not advisable and they should be better avoided.	We suggest that the process may be rethought of and the scheme of Block Assessment may be avoided.

6.2	Clarification to amendments proposed in Clause 49 of Finance Bill	Without prejudice to our suggestion to have a rethink on the proposals related to Block Assessment, we find that there are several areas where there is confusion prevalent on account of the language of the provisions and also other factors. We have listed some of the areas where we feel that better clarity is required for effective implementation of the scheme of Block Assessment : 1. If during the pendency of block assessment proceeding of first search, a second search is conducted, then would the material found in the course of second search proceeding, be used to make addition in respect of assessment of first block proceeding? This is because, total income would include any other income as well. If yes, then what is the need for second block assessment? 2. A person is required to disclose total income including undisclosed income in return filed in response to notice u/s 158BC(1) of the Act. Thus, a person, it appears, has to disclose even his income which he has returned u/s 139(1). This forms part of income u/s 158BB(1)(i). If there is a prior assessment or reassessment, then such amount is also	We request that appropriate clarifications in relation to all the difficulties expressed may please be provided either by carrying out the necessary modifications in the provisions or by way of a Circular from the CBDT explaining the correct position of law.

		forming part of income assessed u/s 158BB(1)(ii). Thus, the same income is included twice. Section 158BB(1) states that the total income is the aggregate of clauses (i) to (v). Thus, returned income is added twice, which cannot be the intention. This needs clarification 3. It appears that since, returned income is to be included in the return filed in response to notice u/s 158BC(1) of the Act, therefore, even such returned income is to be taxed at a higher rate of 60%. Again, there appears to be no rationale to this. 4. The purpose of block assessment is to add all income and not only undisclosed income. Undisclosed income is defined to not only include income in respect of incriminating material found, but any other addition as well. It appears that normal additions made for earlier years would also be taxed at a higher rate of 60% as compared to the normal rates of tax. Thus, any routine disallowance, say u/s 14A or 37(1) which has nothing to do with the search proceeding, would be taxed at 60%. Please clarify? 5. Where income found as a result of search is already included in return filed u/s	

		158BC(1) whether the same would also be considered as undisclosed income u/s 158BB(1)(e) of the Act? If yes, then there would be double addition. Please clarify. 6. As per 158BB(1)(iv), income of the year of search which is already disclosed in the books of account or other documents are to be included in the computation of total income u/s 158BB(1) of the Act. However, such income is specifically sought to be excluded u/s 158BA(6) of the Act. This appears to be inconsistent. It appears that the intention is to only tax income of the year of search for the period upto the date of execution of last of authorisation of search only which is related to incriminating material found. However, entire undisclosed income is getting taxed and it includes not only the income relatable to incriminating material but all other income which comes to the knowledge of the Assessing Officer. This doesn't appear to be the correct interpretation but it is so on plain reading of the provisions. Please clarify. 7. The tax rate of 60% is applicable only on the income u/s 158BB(1)(a) i.e., income disclosed in the return filed in response to notice u/s 158BC(1) and in respect of the	

		additions of undisclosed income added by the AO u/s 158BB(1)(e) of the Act. There is no rate of tax prescribed in respect of the other incomes which is income u/s 158BB(1)(b), 158BB(1)(c) and 158BB(1)(d). Either the same are not to be taxed at all and are to be included in the computation of total income only or they are to be taxed at normal rates. Please clarify. 8. What will be the effect of the losses of the years which are forming part of the block period. If the same are going to be assessed as loss of block period and not of any particular assessment year, then how will the provisions of carry forward and set off apply? 9. Under the earlier provisions, section 158BD used the words "undisclosed income belongs to". However, the proposed provision has used the words "undisclosed income belongs to or pertains to or relates to". It is not sure as to what one means by the term undisclosed income relates to or pertains to another person. Please clarify. 10. Further, in the latter part of section 158BD, what has to be handed over includes, apart from assets and books,	

		expenditure. How can expenditure be handed over? 11. An assessee is only required to pay tax at the rate of 60% and that too without any surcharge. This appears to be more like an amnesty scheme where an assessee is asked to pay 60% and go scot-free. Where similarly placed undisclosed income which is charged to tax u/s 115BBE for non-search cases are to be taxed at a much higher rate, with surcharge and cess and with penalty as well. This appears to be discriminatory. Hence the tax rate u/s. 115BBE is required to be reduced suitably.	

7. Internation Taxation

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
7.1	It is proposed to introduce a presumptive tax regime for non-resident engaged in the business of operation of cruise ships under which 20 per cent of amount paid/ payable/ received/ deemed to be received for the carriage of passengers is deemed to be the profits and gains of such business. The proposed section 10(15B) exempts the income of a foreign company from the lease rental of cruise ship from the company opting for taxation under section 44BBC provided the payor and payee are the subsidiaries of the same holding company. Further, this exemption is available only till AY 2030-31.	A presumptive rate of 20 per cent is too high. Ordinarily, the rate under presumptive regime varies from 5 per cent to 10 percent. For instance, the rate under section 44B for shipping business is 7.5 per cent, under section 44BBA for operation of aircraft is 5 per cent. Because of the restriction of having the same holding company, the benefit of the exemption will be restricted to limited situations	The presumptive rate of 20 per cent should be reduced and should be in line with the rates under other presumptive tax regimes for the similar businesses. The condition that the payor and the payee should be the subsidiaries of the same holding company is very restrictive, without reasons and results in several cases falling outside its ambit. Thus, the exemption is requested to be made available in all situations irrespective of the relationship between the payor and payee. Further this exemption is available only till AY 2030-31 and is requested to be enacted without any sunset date.

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7.2	Section 10(15B) is proposed to be inserted to provide that income of a foreign company from lease rentals of cruise ships shall not be includible in the total income, subject to certain conditions.	The proposed section exempts "lease rentals". However, this term has not been explained. It may lead to more interpretational issues and hence, litigation. Whether 'Holding Company' for Section 10(15B) is required to be an Indian Company or Foreign Company. Whether the expression 'operate such cruise ships in India' would mean 'management and operation of foreign ship operation company' or operation of ship solely in the Indian territorial waters'?	1. The term 'lease rentals' should be defined suitably to reduce interpretational issues. 2. The term 'operate such cruise ships in India' be defined to mean operation of cruise ships in the Indian territorial waters. 3. The Holding company be permitted to be an Indian company or a foreign company. This would attract foreign investors to participate in the Indian cruise shipping market.
7.3	The Finance Bill (No. 2) of 2024 has proposed amendments to section 245Q and 245R to allow applicants to file application for withdrawal of their applications which have been transferred to the BAR, only in cases where no order has been passed under section 245R(2) of the Act, either by the AAR or the BAR.The Memorandum in Para 3 provides the rationale as to why this relaxation has been provided i.e. these applications were filed before AAR to get certainty on taxability of the transactions with an intent to get a ruling from a quasi-	The proposed amendment excludes applications which got admitted by AAR and stood transferred to the BAR as these were never heard on merits, due to prolonged non-functioning of AAR and other allied reasons. It is submitted that the reasons mentioned in Para 3 of the Memorandum permitting withdrawal are equally relevant for the Applicants whose advance ruling has been admitted by AAR but not heard. Thus, they also are required to be allowed to file for withdrawal before the BAR.Further, the application timeline	The Proviso proposed to be inserted in section 245Q(4) of the Act is requested to be amended to allow application for withdrawal by Applicant even in cases where admission order under section 245R(2) of the Act has been passed by the erstwhile AAR but the application is pending before the BAR.It is submitted that the application and withdrawal timeline for the Applicant and the Board of Advance Ruling be suitably extended. The applicant be allowed to file for withdrawal anytime till 31 December 2024 and the Board of Advance Ruling be allowed to approve the withdrawal till 31 March 2025.

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	judicial forum in a time-bound manner. However, due to various reasons like change in constitution of BAR forum, non-binding nature of the ruling (as it is made appealable to High Court), substantial passage of time, and other commercial reasons, these applicants wish to withdraw their applications.	for the Applicant and the Board of Advance Ruling are on or before 31 October 2024 and 31 December 2024 respectively is very short.	

8. Vivad Se Vishwas Scheme

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
8.1	Vivad se vishwas Scheme – Clause 88- 99 Unlike the previous Direct Tax Vivad Se Vishwas Act, 2020 (2020 Scheme), the proposed Direct Tax Vivad Se Vishwas Scheme, 2024 (2024 Scheme) does not enable settlement of cases where an assessment order is passed by the Assessing Officer, or an appellate order is passed by the lower appellate authority, but the time limit for an appeal against such assessment or appellate order has not expired as of the specified date.	Apparently, there seems to be no reason to exclude cases where assessment/appellate orders have been passed as of the specified date, whose time limit for filing appeals has not expired. Such cases could lead to potential litigation where appeals may be filed after the specified date. If the intent of the Scheme is to curb litigation then the scope must be expanded to include the same.	It would be a welcome step if is also extended to cases where assessment/appellate orders have been passed as of the specified date, whose time limit for filing appeals has not expired, to nip the potential litigation in the bud. Further, assuming the 2024 Scheme is extended to cover such cases, the 50% relief in disputed tax needs to be granted where assessment/appellate orders are passed as of 22 July 2024 but time for filing appeal has not expired.

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
8.2	Second and third proviso to clause 90 of the 2024 Scheme permits settlement of appeal at 50% of the amount, where appeal/ writ/ SLP is: • filed by tax authorities, or • filed by assessee before CIT(A), and the issue is covered by a favourable ITAT decision in assessee's own case. • filed by assessee before ITAT, and the issue is covered by a favourable High Court decision in assessee's own case.	• Point 1: As aforesaid, a suggestion is made that the 2024 Scheme be extended to cover cases where assessment/appellate orders have been passed as of the specified date, whose time limit for filing appeals has not expired. However, such cases may not be entitled to 50% concession, as the second and third proviso require that an appeal/ writ/ SLP should be filed as of the specified date. • Point 2: Separately, clause 90 permits 50% concession only if the dispute which is settled, which is pending at an appellate forum, is accompanied by an appellate order of a higher appellate forum (which has not been reversed). Consider a case where, assessee has won before ITAT in years 1 and 2 on certain issues, for which Tax Department is in appeal before High Court – assessee is in appeal for year 3 before ITAT which is pending as on 22 July 2024, which also includes issues decided in favour by ITAT in years 1 and 2. If such assessee is to settle pending ITAT appeal of year 3, assessee needs to pay 100% of disputed tax, despite the fact that the issues are covered in its favour by ITAT ruling for earlier years 1 and 2. Such proposition is	• Point 1: It would be a welcome step if the 50% concession is extended to cases where assessment or appellate order has been passed and no appeal is filed as of the specified date and time limit for filing such appeal has not expired. • Point 2: It is suggested that benefit of 50% concession may be extended to cases where disputes pending before an appellate forum which are being settled, are covered in favour of the assessee by an order of the same appellate forum for a preceding year.

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
		inequitable to the assessee, and may discourage assessee from settling pending ITAT appeal for year 3 under VSV.	

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8.3	The 2020 Scheme covered disputes pending as on 31 January 2020. The 2024 Scheme proposes to cover disputes pending as on 22 July 2024. In a case where appeal/ writ/ SLP was pending as on 31 January 2020, which continues to be pending before the same appellate forum even as on 22 July 2024, the 2024 Scheme requires the assessee to pay a higher amount to settle such dispute, as compared to the amount required to be paid to settle appeal/ writ/ SLP which has been filed after 31 January 2020. The higher amount, in case of disputed tax, is 10% more, and in case of disputed interest/ penalty/ fee, is 5% more.	It is a very welcome step to allow assessees a second opportunity to settle disputes which were eligible for settlement under the previous 2020 Scheme. However, consider the case of an assessee whose appeal before CIT(A) was pending as on 31 January 2020, which was not settled under the previous 2020 Scheme as the assessee expected an order in its favour. For no fault of the assessee, the same appeal continues to remain pending before CIT(A) even as of 22 July 2024. Such assessee may need to pay a higher amount to avail the 2024 Scheme, as compared to another assessee where CIT(A) would have decided against him and whose appeal to ITAT would be pending as on 22 July 2024. This difficulty would equally arise for appeals pending at higher appellate forums as of 31 January 2020, which remain pending even as of 22 July 2024. While VSV Scheme is meant for settlement of disputes and is at the choice of the assessees, the proposed measure may be viewed as penalising assessees for not availing the previous 2020 Scheme.	In furtherance to the object of VSV to reduce litigation, it is suggested to remove the proposed discrimination between appeals/ writs/ SLPs eligible for settlement under the previous 2020 Scheme which continue to remain pending at the same appellate forum as of 22 July 2024, and appeals/ writs/ SLPs filed after 31 January 2020.

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8.4	Clause 92(4) of the FB provides that settling of an appeal/dispute under VsV 2024 doesn't allow parties to contend that either party has acquiesced in the decision on the disputed issue by settling the dispute. The above provision is pari-materia to Explanation to Section 5 of the DTVSV Act, 2020.	The VSV Scheme expressly provides that settlement of an appeal/dispute doesn't tantamount to acceptance of the position. Despite this, when FAQs were released in pursuance of the DTVSV Act, 2020, FAQ#54 mentioned that secondary adjustment would be applicable to appeals/disputes settled in VSV. This is an incongruity and a major roadblock for taxpayers facing transfer pricing to consider VSV.	An explanation is requested to be added to Clause 92(4) of the FB, providing that secondary adjustments would not be applicable to appeals/disputes settled under VSV. Without prejudice, and in case this recommendation is not allowed, when FAQs under VSV 2024 are published, detailed guidance should be provided on the manner in which secondary adjustment would be worked out.

9. Other Provisions

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
9.1	Section 245(2) – Clause 73 of Finance Bill Existing s.245(2) empowers the Assessing Officer to withhold any type of refund due to a person, having regard to fact that assessment or reassessment for very same AY (in respect of which such refund was determined) or any other AY is pending in the case of such person. The conditions required to be fulfilled by the Assessing Officer are: (1) the Assessing Officer is of the opinion that grant of refund is likely to adversely affect the revenue; (2) the Assessing Officer has recorded reasons in writing, and (3) the Assessing Officer obtained prior approval of PCIT/CIT. FB (No. 2) 2024 proposes to amend s.245(2) to inter alia omit the condition that 'AO is of the opinion that the grant of refund is likely to adversely affect the revenue'. The Explanatory Memorandum states that the second condition of recording of reasons takes care of the first condition of AO being required to form an opinion that the grant of refund is likely to adversely affect the revenue. The Explanatory Memorandum further states that, even if an	While one cannot dispute the need of powers to Assessing Officer to withhold refunds to protect interests of the revenue, it is necessary to ensure that such powers are exercised cautiously and judiciously. It should be an exception rather than the norm. The requirement on the Assessing Officer to demonstrate that grant of refund is likely to adversely affect the revenue has been a part of the Income-tax Act, 1961 since its inception. It was originally inserted as part of s. 241, which enabled the Assessing Officer to withhold refund arising as a result of an order, owing to pendency of appeal or any proceedings under ITA, till such time as the Commissioner may determine. Finance Act, 2001 deleted s. 241, and Finance Act, 2017 introduced a reincarnated s. 241A. In the context of s. 241 and s. 241A, Courts have held that mere pendency of any other proceeding under ITA or mere pendency of assessment or anticipation of demand from assessment is not sufficient to withhold refund . It is significant to note that, Courts have interpreted s. 241A as primarily	It is suggested that the proposed amendment be withdrawn..

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
	opinion is formed, it has already been expressed in terms of reasons recorded in writing.	requiring the Assessing Officer to record his reasons as to why grant of refund is likely to adversely affect the interest of the revenue. The recording of reasons is not to establish why refund should be withheld, but to establish why grant of refund is likely to adversely affect the interest of the revenue. • Ingenico International India (P.) Ltd's 2021 SCC Online Del 2969 (Delhi HC): "…before the A.O. embarks on this route, he is required to cross two hoops. First, the A.O. is required to record his reasons in writing as to how grant of refund is likely to adversely affect the interest of the Revenue. Second, the A.O. is obliged to obtain the previous approval of his superior..." • Maple Logistics (P.) Ltd. v. PCCIT [2019] 112 taxmann.com 199 (Delhi): "… a speaking order is required to be passed culling out the reasons as to how the grant of refund is likely to affect the Revenue… to address the concern of recovery of revenue in doubtful cases, the legislature introduced Section 241A,which enables the Assessing Officer to withhold the refund in favour of the assessee which becomes due in terms of sub-section (1) of section 143, if he is of the opinion that having regard to the fact that a	

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
		notice has been issued under section 143(2), the grant of refund is likely to adversely affect the revenue. He would, however, do so by recording reasons in writing and with previous approval of the Principal Commissioner, or Commissioner, and withhold such refund till the date the assessment is made… He (Assessing Officer) must make an objective assessment of all the relevant circumstances that would fall within the realm of "adversely affecting the revenue"… Such an exercise cannot be treated to be an empty formality and requires the AO to take into consideration all the relevant factors. The relevant factors, to state a few would be the prima facie view on the grounds for the issuance of notice under section 143(2); the amount of tax liability that the scrutiny assessment may eventually result in vis-a-vis the amount of tax refund due to the assessee; the creditworthiness or financial standing of the assessee, and all factors which address the concern of recovery of revenue in doubtful cases." • Ericsson India (P.) Ltd. v. ACIT [2020] 117 taxmann.com 381 (Delhi): "…the Assessing Officer shall, firstly, with reasons, make a	

Sr. No.	Proposed amendments	Difficulties Obstacles / Hurdles either Interpretative, Administrative or otherwise	Suggestions
		prima facie estimation of the probability that additions would be made in the Scrutiny Assessment Proceedings; secondly, he shall make an estimation of the quantum of additions/disallowances, if any, that may be made to the income returned, and the likely tax effect that such additions/disallowances may have, thirdly; he, should consider the financials, and financial standing of the petitioner with regard to its ability to meet and service any demand for the tax that may be raised as a result of the Scrutiny Proceedings; and, also take into consideration such other factors eg. past demands, any outstanding litigation and the past conduct of the assessee etc. All the aforesaid aspects should be examined to ascertain if the payment of the refund, or any, part thereof, are likely to have adverse affect on the Revenue." The proposed removal of this requirement may create uncertainty and ambiguity as to the scope of the reasons which are required to be furnished by the Assessing Officer for withholding refund. It may also create avoidable ambiguity on whether the reasons necessarily require the Assessing Officer to establish that the grant of refund	

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		is likely to adversely affect the interests of the Tax Department. It may create unwarranted speculation on the scope of the provision, going counter to the avowed objective of reducing litigation and providing certainty for assessees. This amendment should therefore not be made so that no litigation arises on this subject and even if it involves two steps by an AO the same should be left as it is as an additional safeguard. There is no harm in retaining this condition which has been a part of the statute since its inception, especially since several High Court decisions have already analysed this condition and provided invaluable guidance on this condition, which could serve as a reasonable safeguard for assesses.	

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9.2	The Finance (No. 2) Bill, 2024 does not have a specific clause to repeal s.2 of the Finance Act, 2024. This is unlike previous Union Budgets. Say, Finance (No. 2) Act, 2019 had the following provision: "212. Section 2 of the Finance Act, 2019 (7 of 2019) is hereby repealed and shall be deemed never to have been enacted"	In absence of such repeal provision, ambiguity may arise on the correct tax rates (including those applicable for TDS during FY 2024-25) to be applied for AY 2025-26, when two concurrent Acts provide for different rates of tax.	It is suggested that a provision for repeal of s.2 of Finance Act, 2024 may be provided on lines of s.212 of Finance (No.2) Act 2019.