Date: 25th August, 2020

To,
Shri Pramod Chandra Mody,
Chairman,
Central Board of Direct Tax,
North Block,
New Delhi
Email – chairmancbdt@nic.in

Respected Sir,

Sub: Suggestions / Representation on behalf of the taxpayers / professionals in connection with few direct tax related matter

About C.V.O. Chartered & Cost Accountants' Association

C.V.O. Chartered and Cost Accountants' Association (CVO CA) is a four decade old, non-profit professional organization established in 1973. It has acclaimed a premier position in society. Its objective is to disseminate knowledge in the field of Taxation, Accounting, Finance and Allied laws. It has membership strength of more than 1850 members. Members of the Association have acclaimed respectable position in the CA practice and industry where they serve. It also organizes general public awareness program. One of the flagship programs is on Union Budget, which is organized in Gujarati Language for general public. The Association also publishes monthly Newsletter which is called 'CVO CA News & Views'. Besides these activities Association also supports students who are pursuing CA, CS & CWA by providing them financial assistance in the form of scholarships and interest free loans.

Background

CVO CA deeply appreciate the measures taken by the Indian Government such as further extension of various compliance deadlines, moratorium period and waiver of the penalty amidst the difficulties caused by COVID-19 Pandemic to each and every taxpayer.

However, in response to these various measures, we would like to make further suggestions for the changes to be made and the same are reproduced hereunder. Also, we would like to represent on the matter where currently there is an ambiguity in implementing the provisions for the taxpayer / professionals.

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Following is the summary of Suggestion /representation on behalf of the taxpayers/professionals in connection with the Direct tax related matter. Detailed reasoning of same is provided in subsequent paragraphs.

Sr. No	Issue	Suggestion
1	Withholding of Income-tax Refunds	• Outstanding refunds should be released immediately • Direction should be given to CPC/AO to quickly process the returns and issue refund • Refund withheld pending scrutiny proceedings should be issued immediately • Pending rectification and order giving appeal effect should be passed immediately
2A	Delay in approval of lower withholding tax applications	• Validity of lower withholding tax certificate issued for FY 2019-2020 should be extended till 31st March, 2021 • New lower withholding tax applications should be disposed quickly
2B	Notice for short deduction of TDS based on CBDT order dated 31st March, 2020	System for processing of TDS needs to be amended appropriately to ensure notice are not issued
3	Interest rate of 1.5% p.m. or 1% p.m. under section 201(1A) towards the delayed deduction or delayed payment/deposit of the TDS respectively	Interest rate towards the delayed deduction or payment/deposit of the TDS should be restricted to 0.75% p.m. for FY 2020-21
4	Clarification on meaning/scope of various sub-terms in the definition of professional services under section 194J of the Act	Various sub-terms in the definition of professional services under section 194J of the Act need to be defined/clarified or omitted, if required, to avoid overlap between professional services and fees for technical services
5	Relaxation in provisions of Section 6 of the Act – for days stayed in India on account of COVID pandemic	Period from 1st April to 30th September, needs to be excluded from calculation of residential status for FY 2020-21 and other related provisions

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Sr. No	Issue	Suggestion
6	Clarification on applicable rate of tax and surcharge to be considered as maximum marginal rate for capital gains taxable under sections 111A, 112A, 112 and dividend income in the hands of discretionary trust	• Maximum tax rate for capital gains in hands of discretionary trust needs to be capped at special rates prescribed under sections 111A / 112A/ 112 • Maximum surcharge on capital gains (sections 111A / 112A) and dividend income needs to be capped at 15%
7A	Manner of computing losses/depreciation of earlier years attributable to specified sections for the purpose of clause (ii) of sub-section (2) to section 115BAA	Manner of computing losses/depreciation of earlier years attributable to specified sections be notified immediately so as to provide assessee with sufficient to time before due date of filing of return of income for AY 2020-21 to analyse impact of migration to new regime.
7B	Treatment of unabsorbed depreciation allowance in respect of block of assets	Benefit of claim of unabsorbed depreciation for earlier years in respect of block of assets by way of addition to written down value of such block of assets should also be extended to assessees opting for new tax regime after AY 2020-21.
7C	Manner of claiming depreciation for companies exercising option under section 115BAA and 115BAB	• Notification No. SO 3399(E) [No.103/ 2016 (F.No.370142/29/2016-TPL)], dated 7-11-2016 providing for manner of claim of depreciation for section 115BA should be made applicable to sections 115BAA and 115BAB. • In case there is further change in manner of claiming depreciation under sections 115BAA and 115BAB, same should be notified immediately so as to provide assessee with sufficient to time before due date of filing of return of income for AY 2020-21 to analyse impact of migration to new regime.

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1. <u>Release of Income-tax Refunds in case where scrutiny proceedings are pending / non processing of return</u>

Issue:

The refunds due to the assessees have been withheld in many cases. These refunds are withheld either by

- not processing the income-tax returns in terms of the provisions of section 143(1) of the Act till the due date, or**,**
- where the return is processed and refund determined**,** the refund is still not released on the ground that the scrutiny proceedings are pending, or
- not passing rectification / order giving appeal effects resulting in refund till the due date

Non-processing of the return and consequently withholding of the refund on the pretext of pendency of scrutiny proceedings may have been appropriate under the erstwhile regime prescribed under section 143(1D) of the Act. However, the Finance Act, 2017 has made section 143(1D) inoperative for assessment years commencing on or after April 01, 2017.

In substitute thereof, Section 241A has been inserted in the Act. Section 241A provides for withholding of a refund only if the assessing officer is *inter alia* able to demonstrate by reasons recorded in writing that the release of the refund shall adversely affect the interests of the Revenue.

Various courts[1] while dealing with provisions of section 241A of the Act have held that the withholding of a refund on the ground that scrutiny proceedings are pending is not a sound enough ground to assert that the release of the refund shall adversely affect the Revenue. The courts in such cases have directed the assessing officers to release the refund to the assessees. Despite various judicial precedents on the matter and to this effect**,** the refunds are being withheld on similar premise. In such cases the assessees are forced to file Writ before the jurisdictional High Court. This not only increases the litigations but also leads to wastage of time**,** money and energy of the taxpayers as well as of the Department.

Also, on many occasions the refunds are withheld by the assessing officer on the ground that in the preceding year/s there have been substantial additions and that the assessing officer is of the opinion that similar additions shall prevail in the current year as well. However, while reaching this conclusion it is often conveniently ignored by the assessing officers that the additions so carried out in the preceding years have been deleted by the appellate authorities. Further, it is

[1] Cooner Institute of Health Care and Research Centre P L vs. ITO W.P. (C) 430/2020, Maple Logistics Private Limited [2019] 112 taxmann.com 199 (Delhi) and various other cases

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also observed that there has been considerable delay in passing rectification orders / order giving appeal effect to appellate orders which could result in refund in hands of assessee.

The assessees being at the receiving end suffer in such cases since they are required to run from pillar to post to obtain the refund which is rightfully due to them.

Suggestion:
Due to the Covid-19 pandemic, businesses across the economy are facing financial stress and many of them are in turmoil. There is an immediate need for these business houses to have adequate cash at their disposal, not only to upkeep their operation but also to compensate their employees. Considering the extraordinary situation and the precedents so far on the matter, we humbly propose and suggest to your goodself as under:

- Existing outstanding refund should be processed immediately
- Return of income furnished by the assessees shall be quickly processed and that the refund due to the assessee shall be released instantly.
- Release the refunds that are mechanically withheld under Section 241A of the Act on the mere ground that scrutiny proceedings are pending.
- The assessing officers be directed to pass all the pending rectification applications and order giving appeal effects to appellate orders

The timely release of the refund will provide a much-needed boost to keep these businesses alive and running. It is an opportunity for the CBDT to strike the right chord with the assessee and bridge the trust deficit.

2. <u>Delay in approval of Lower Withholding Tax Application and Issuance of Notice for short deduction of TDS</u>

Issue:
Due to outbreak of the pandemic Covid – 19 virus and the severe lockdown measures imposed, there were severe disruption in the working of the almost all sectors including the functioning of the Income Tax Department. In such a scenario, the applications filed by taxpayers u/s 195 , 197 and 206C(9) of the Act for lower/Nil deduction of TDS / collection of TCS is not being attended in a timely manner by the TDS – Assessing officers causing genuine hardships to the taxpayers.

To provide relief, CBDT (vide its order dated 31 March 2020) extended the validity of the Lower Withholding Tax orders issued for FY 2019-2020 until 30 June 2020 or disposal of the application filed for FY 2020-2021, whichever is earlier. Further, it also issued clarifications on 09 April 2020 for nuances of such relief provided.

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While this was a welcome move in such unprecedented times, there are genuine difficulties faced by the taxpayers in availing the benefit of the above granted relief, which are listed hereunder:

- Large number of applications filed under section 195, 197 and 206C(9) for FY 2020 – 2021 are still pending for disposal because of lockdown during which tax offices are either fully or partially closed throughout the country as on date. Whereas the relief provided by the CBDT expired on 30th June 2020. Therefore, transactions undertaken post 30 June 2020 are liable to tax at applicable rates (pending disposal of Nil/lower withholding order) causing cash crunch to the already crippled business class.

- There are several instances where taxpayers have been issued notices for short deduction of TDS in cases where taxpayers have deducted TDS at lower rate relying on the certificates issued for FY 2019-2020. The genuine taxpayers, who have filed their TDS returns for Quarter 1 of FY 2020 quoting the Lower Withholding Certificate Numbers of FY 2019-2020, have received a notice for short deduction of TDS. It seems that the TRACES system has not been modified to give cognizance to the certificate number for previous years, resulting in auto-generated demand notices to various taxpayers. This has caused unnecessary hardship to taxpayers who availed the benefit as per the order issued by CBDT.

Suggestion:

In view of the liquidity crunch faced by the taxpayers, it is suggested to extend the validity of the Lower Withholding Certificates issued for FY 2019-2020 from 30 June 2020 until 31st March 2021 by exercising the powers granted to CBDT vide Section 119 of the Act. Such relaxation would be important for cash flow management of both resident as well as non-resident taxpayers, and in present circumstances, where taxpayers and businesses are already facing severe liquidity and cash flow issues.

Further, with reference to the notice for short deduction of TDS, it is suggested that the matter may be looked into and appropriate measures may be taken so that undue short deduction notices are not issued to the genuine taxpayers who have availed benefit in their TDS return for Quarter 1 of FY 2020-2021 in line with the extension granted by CBDT.

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3. <u>Reinstate the reduced interest rate of 0.75% p.m. as against 1% p.m. and 1.5% p.m. towards the delayed deduction and delayed payment/deposit of the TDS after deduction respectively till 31 March 2021</u>

Issue:

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 passed on 31st March 2020 gave relief to the taxpayer by virtue of reduction in interest rate from 1% p.m. (in case of non-deduction of TDS) and 1.5% p.m. (in case of non-payment of TDS after deduction) to 0.75% p.m. on delayed deposit of TDS due date of which falls during the period 20 March 2020 to 29 June 2020 but was not paid within such due date and if the same has been paid on or before 30 June 2020. However, on 24 June2020, the CBDT vide notification no. 35/2020 extended various due dates in relation to compliances but did not extend the applicability of reduced rate of interest to be charged on delayed deposit of TDS and thereby restored the original interest rate of 1% p.m. (in case of non-deduction of TDS) and 1.5% p.m. (in case of non-payment of TDS after deduction).

In this connection, we wish to highlight the fact that due to the closure of the businesses during lock down and down turn in the Indian and Global economic activity, the supply chain has been extensively interrupted, many contracts have been terminated, number of customers have been reduced significantly, etc. which all have severely impacted the cash flow of all the businesses. This cash flow crunch if not resolved then can lead to severe disaster of not only one business but the entire chain of businesses connected with it.

Separately, if there is a single day delay of TDS deposit beyond 30 June 2020 then the interest has to be computed at 1.5% p.m. starting from the month in which tax was deducted even though the deduction date is falling within discounted rate of interest. For eg. If the taxpayer deposited tax on 01 July which was earlier due on 07 April 2020, then taxpayer will have to bear the interest of 1.5% p.m. starting from the month in which the tax was deducted i.e. March 2020.

Hence the rate of interest of 1%/1.5% p.m. on delayed deduction or deposit of TDS is a huge setback for the taxpayers specially those who are struggling with cash flows during this pandemic period.

Suggestion:

For the aforementioned reasons, we humbly request your goodself to restore the discounted interest rate of 0.75% p.m. as against 1.5% and 1% p.m. towards the delayed deduction or delayed payment/ deposit of the TDS for all the taxpayers for the entire fiscal i.e. till 31 March 2021.

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This will give more liquidity in the hands of the businessman and will enable them to focus on their business revival and working capital management. In a way, the government will indirectly help the taxpayer get working capital at the concessional rate of interest in these pandemic crisis.

4. Clarification on meaning/scope of various sub-terms in the definition of professional services under section 194J of the Act

Issue:

Finance Act, 2020 has amended provisions of section 194J of the Act reducing the rate of TDS for fees for technical services from 10% to 2%. The amendment was made to bring in tax certainty and to reduce litigations surrounding the overlap in the scope of section 194J and section 194C in respect of 'carrying out of any work' which could involve rendering of 'technical services'.

While this is a welcome move, this is likely to bring into limelight the distinction between 'professional services' and 'fees for technical services' which was not relevant till date but henceforth would be attracting different rates. Lower TDS rate of 2% shall be applicable only in case of fees for technical services (which is not professional services). Hence, it first needs to establish that the services rendered are not professional services within the meaning of section 194J of the Act.

Professional services has been defined under section 194J of the Act to mean services rendered by a person in the course of carrying on legal, medical, engineering, architectural, accountancy profession or technical consultancy or interior decoration or advertising or profession of authorized representatives, film artist, company secretary, information technology and services rendered by specified person in relation to the sport activities.

Fees for technical services for the purpose of section 194J of the Act has been defined to mean any consideration for rendering of any managerial, technical or consultancy services.

It is pertinent to note that the term 'professional services' has been defined under Section 194J to include technical consultancy related services. Further, for the purposes of section 194J the term 'technical services' is to be understood in the manner defined in Section 9(1)(vi) which inter alia includes managerial, consultancy, technical services. Thus, there is apparent conflict and overlapping between the term professional services and technical services.

Further, the sub-terms/constituents under professional services and fees for technical services have not been defined separately under the Act. In absence of same, there appears to be some overlapping in case of engineering, information technology services included in definition of professional services and in the technical and consultancy services included in definition of fees for technical services.

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Due to lack of proper demarcation between 'professional services' and 'technical services' there is confusion amongst the taxpayers over classification of services.

Hence, it seems that the amendment that was bought in to reduce litigation on one aspect may lead to litigation on a completely new issue of classification of services as professional services or fees for technical services.

Suggestion:

In light of above discussion, we humbly suggest your good-self to:

i. Clarify and define the scope and meaning of each sub-terms in the definition of professional services under section 194J of the Act.
ii. Further, in order to resolve the apparent conflict between the two terms we suggest that the sub-term 'technical consultancy' as contained in the definition of professional services under section 194J shall be omitted.

This will prove very useful to prevent potential litigation and undue hardship to assessee.

5. <u>Relaxation in provisions of Section 6 of the Act dealing with residential status of persons</u>

Issue:
According to the provisions of Section 6 of the Act, the residential status of a person in India is dependent upon his/ her period of stay in India during the relevant previous year as well as the preceding previous years.

The Covid-19 pandemic continues to cause havoc and the situation is far from returning to pre-Covid-19 normalcy**.** Further**,** international flights are operating at highly curtailed capacities. As a result, the following persons have been stranded and are forced to stay in India even for the Financial Year (FY) 2020-21 relevant to assessment year (AY) 2021-22:

- Individuals who had <u>come on visit to India</u> during the FY 2019-20 for a short duration and intended to leave India have been stranded in India for a far longer period. This additional period of stay would make them resident or ordinarily resident in India for AY 2020-21 as well as for AY 2021-22;
- Further, *bonafide* Indian citizens or person of Indian origin who were <u>planning to leave India</u> on account of them been employed in overseas entities have been stranded in India and are exercising the employment from home (India) for their foreign employers.

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These individuals have already been in India for 122 days as on July 31, 2020 which is more than the threshold of 60 days prescribed under section 6(1)(c) of the Act and of 120 days prescribed under clause (b) to Explanation 1 to section 6(1) of the Act. Considering the unintended stay of such persons due to the pandemic**,** many complexities and unforeseen situations could arise, illustratively:

- Such an individual shall be regarded as resident in India resulting in taxation of incomes which otherwise may not have been chargeable under the Act.
- Where such an individual is a director or key management person ("KMP") of a non-resident foreign company and where he/ she is required to take strategic decisions for that company during his/ her such stay in India, there is a risk that a place of effective management ("POEM") of that company may be determined to exist in India as per section 6(3) of the Act.
- Similarly, where managing partner/s, karta, etc. of firms, Hindu Undivided Families ("HUFs"), etc., respectively, are stranded in India, then such firms, HUFs, etc. could be regarded as resident in India owing to the control and management of their affairs being not wholly situated outside India.
- For an assessee making payments to these stranded individuals there is uncertainty as to whether tax withholding in terms of Chapter XVII-B of the Act needs to be undertaken in terms of section 195 of the Act or as per provisions that are applicable to resident payees.

Suggestion:

The above issues throw up quite complex challenges which require changes on many fronts. Therefore, considering the complexities involved, we propose and suggest that your good self should immediately provide comprehensive guidance and clarification on various issues that may arise owing to situations as discussed above, and particularly where such persons are able to demonstrate that their stay in India is beyond their control and is owing to the pandemic. In this regard, we humbly propose the following suggestions:

Sr. No.	Particulars	Suggestions
1	**Individual**	1.1 Period of stay commencing from April 1**,** 2020 till the date September 30, 2020 shall be excluded while determining residential status under section 6 of the Act. 1.2 This relaxation shall be for the person who has visited India as well as for the Indian Citizen who was to leave India owing to him/ her being employed in an overseas/foreign country. 1.3 Similar relief should be applied for Article 15/16**,** as the case may be, of relevant Double Taxation Avoidance

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		Agreements ('DTAA') dealing with taxing of income from employment where such treaties grant the source country the right to tax the income from employment if an employee exercises his/ her employment in the source country. Illustratively, 'Article 16 – Dependent Personal Services' of the India-USA DTAA provides the source country with a right to tax the employment income of an individual if such individual is present in the source country for a period/s exceeding 183 days.
2	**Company**	A Director and/ or KMP making strategic decisions during their forced stay in India owing to the pandemic up to September 30, 2020 shall not be reckoned for determining the POEM of the company in India.
3	**Other Persons**	Control and management exercised during their stay in India during the period up to September 30, 2020 shall not be reckoned while determining the residential status of such person.
4	**Permanent Establishment/ Business Connection**	Employees of foreign organisations working from India owing to the pandemic shall not be construed to be forming a permanent establishment or be having a fixed base in India or a business connection in India for such foreign organizations during this period up to September 30, 2020.
4	**Documentation and Records**	Providing for the documents and records that these persons should maintain to prove their bona fide presence in India was owing to COVID-related travel restrictions is requested.

Further, there should be appropriate relaxation from consequential filing requirements and compliances under the Act.

The clarification on the above fronts will help address manifold issues including that of advance tax payments by such persons, tax withholding on the payments to be made to such persons, etc.

The Central Board of Direct Taxation ("CBDT") has issued Circular 11 of 2020 dated May 8, 2020 providing for exclusion of the period of stay for FY 2019-20 in specific cases and has also proposed to issue a similar circular for FY 2020-21. Considering that 122 days of FY 2020-21 relevant to AY 2021-22 have already passed and situation is far from becoming normal, we propose that the CBDT should proceed to offer immediate guidance on the subject and provide much needed clarity in this regard.

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6. <u>Clarify applicable rate of tax and surcharge to be considered as maximum marginal rate for capital gains taxable u/s 111A , 112A, 112 and dividend income in the hands of discretionary trust</u>

Issue:

Finance (No. 2) Act 2019 (FA 2019) increased surcharge rate for individuals, HUFs, AOP/ BOIs and artificial juridical persons from 15% to 25% where total income is between Rs. 2 Crs to Rs. 5 Crs and to 37% where total income is more than Rs. 5 Crs. Accordingly, the highest rate of tax for individual taxpayers goes up to 42.74% (30% + surcharge @37% + cess @4%).

However, the enhanced surcharge rates of 25%/ 37% do not apply in case of capital gains taxable under section 111A or section 112A of the Income-tax Act, 1961 (the Act) i.e. capital gains arising on sale of equity shares in a company or units of an equity oriented fund or units of a business trust liable for securities transaction tax (STT) and dividend income. In other words, the maximum surcharge rate is capped to 15% in case of capital gains taxable under section 111A and section 112A of the Act and dividend income.

As per Sec. 2(29C) of the Act, maximum marginal rate (MMR) is defined as the rate of income tax (including surcharge) applicable for the highest slab of income in the case of an individual, AOP or BOI. Discretionary trusts (under section 164 of the Act), AOP/ BOIs where the share of the member is unknown, business trusts, Category I and II AIFs and charitable trusts on their accreted income are liable to pay tax at MMR in certain cases.

As a result of the amendment by FA 2019, the MMR shall also increase correspondingly to 42.74%, irrespective of the slab/ level of income. To illustrate, if a discretionary trust earns income of Rs. 1 lakh only, it will be liable to pay tax at MMR which is inclusive of surcharge of 37%, which is otherwise applicable on total income of more than Rs. 5 Crs.

In the above context, issue arises regarding the applicable rate of tax for capital gains taxable under section 111A, 112A and 112 of the Act in the hands of discretionary trust i.e. whether the specified capital gains and dividend income should be taxed in the hands of discretionary trust at the highest rate of 42.74% (30% as increased by surcharge @37% + cess @4%) or at following rates:

- Capital gains under section 111A @ 17.94% (specified tax rate of 15% + surcharge @15% + cess @4%)

- Capital gains under section 112A @ 17.94% (specified tax rate of 10% + surcharge @15% + cess @4%)

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- Capital gains under section 112 @ 23.92% (specified rate of 20% + surcharge @37% + cess @4%)

- Dividend income @ 35.88% (30% + surcharge @15% + cess @4%).

In other words, what rate should be considered as MMR for taxing capital gains under section 111A/ 112A/112 in the hands of the discretionary trust and what rate of surcharge should be considered as MMR for taxing capital gains under section 111A/112A and dividend income.

The controversy arises since the AAR in the case of AIG [(1997) 224 ITR 473 (AAR)] has, on the specific issue of applicability of tax rates between section 112 and section 164, upheld applicability of section 164 in preference to section 112.

On the other hand, the way the MMR is defined in the Act is to apply the highest rate of tax applicable to individuals. In the case of capital gains taxable u/s 111A or section 112A or section 112 of the Act, a person in the highest slab rate would also pay tax on capital gains at 15%/ 10% / 20% (as increased by applicable surcharge and cess), as the case may be. Accordingly, for determining MMR applicable to specified capital gains earned by the discretionary trust, the highest rate of tax as applicable to individuals earning capital gains should be considered.

Suggestions:
In light of the above discussion, considering the fact that the discretionary trusts are at par with individuals in respect of highest rate of tax applicable to individuals, the rate of tax for the purposes of determining MMR on capital gains taxable under section 111A or section 112A or section 112 of the Act earned by the discretionary trust should also be restricted to base tax rate of 15% or 10% or 20%, as the case may be. Further, corresponding highest applicable surcharge should be restricted to 15% for such capital gains and dividend income.

Accordingly, base tax rates and surcharge for calculation of MMR for specified income of discretionary trust would be as under:

Specified income	**Base tax rates**	**Surcharge**
Short-term capital gains under section 111A	15%	15%
Long-term capital gains under section 112A	10%	15%
Long-term capital gains under section 112 (without indexation benefit)	20%	37%
Dividend income	30%	15%

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7. Clarification in relation to concessional tax regime under sections 115BAA and 115BAB of the Act

Issue:

In order to give boost to the 'Make in India' initiative and to attract investments, the Taxation Laws (Amendment) Act, 2019 introduced concessional tax regimes for companies under section 115BAA and 115BAB of the Act.

The companies opting for these schemes have to forego various exemptions and deductions which are otherwise available to the companies. In case of companies opting for concessional tax regime under section 115BAA of the Act, brought forward losses and/or unabsorbed depreciation of earlier years attributable to specified exemptions/deductions cannot be set off against income of subsequent years (clause (ii) of sub-section (2) to section 115BAA). However, the manner in which such attributable losses/unabsorbed depreciation is to be computed has not been prescribed leading to divergent views within the industry thereby increasing the risk of litigation.

Furthermore, sub-section (3) of section 115BAA provides that all such losses and unabsorbed depreciation shall be deemed to have been given full effect to and no further deduction/allowance shall be allowed in relation to same except for depreciation allowance . Proviso to sub-section (3) allows assessee to add unabsorbed depreciation as on 1st April 2020 in respect of block of assets to opening written down value of such block as on 1st April 2020. However, such benefit is restricted only in respect of companies opting for concessional tax regime under section 115BAA for AY 2020-21. Companies opting for concessional tax regime after AY 2020-21 is not eligible for such benefit.

Furthermore, companies opting for such concessional tax regimes under section 115BAA and 115BAB of the Act will have to claim depreciation as per prescribed manner. However, manner of claim of depreciation has not been prescribed yet.

In order to decide on migration to such new tax regimes, companies will have to carry out an extensive scenario analysis. Quantum of losses/unabsorbed depreciation attributable to specified sections and to be forgone, manner of claim of depreciation in subsequent years etc. will play a vital role in deciding the same.

Further, aforementioned new tax regimes are effective from AY 2020-21. In absence of prescribed mechanism for computing losses/unabsorbed depreciation of earlier years attributable to specified sections and depreciation for subsequent years, companies are not able take an informed decision to shift to new tax regime.

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Suggestion:

Based on above, we humbly request you to

- Prescribe mechanism to compute losses and unabsorbed depreciation attributable to specified sections for the purpose of clause (ii) of sub-section (2) to section 115BAA
- Extent the benefit under proviso to sub-section (3) of section 115BAA of the Act to assesses opting for concessional tax regime after AY 2020-21 enabling the assessees opting for concessional tax regime in any year to add unabsorbed depreciation of earlier years in respect of block of assets to opening written down value of that year
- Specify the rate of depreciation and the manner of computing depreciation for the purposes of section 115BAA and 115BAB. Extend applicability of Notification No. SO 3399(E) [No.103/ 2016 (F.No.370142/29/2016-TPL)], dated 7-11-2016 providing for manner of claim of depreciation for section 115BA to sections 115BAA and 115BAB of the Act. In case there is further change prescribe the mechanism for claiming depreciation under sections 115BAA and 115BAB of the Act

Further, it is requested to clarify above matters immediately and well before the due date of filing of return of income for AY 2020-21 to enable companies to carry out scenario analysis for migrating to new regime.

We look forward for the positive outcome on all of the above suggestions/representation.

Yours sincerely,

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