

Summary of Post-budget interaction with Honorable Chairman, CBDT, Mr. J.B. Mohapatra on 3 February 2022

The US-India Strategic Partnership Forum (USIPF) in collaboration with KPMG in India organized a post budget industry consultation with Mr. J.B. Mohapatra, Honourable Chairman, Central Board of Direct Taxes (CBDT) on 3 February 2022.

Mr. Mohapatra shared his insights and views on the direct tax amendments proposed in this year's Union Budget. In his opening remarks, he mentioned that this Budget is a continuation to the Department's charted path, with aspirations towards a less complicated statute, low tax rates across sectors as well as predictability and consistency in year-on-year tax.

Key takeaways from the discussion are summarized as under:

BEPS 2.0 – India's approach

- A working group has been set up by the Government to look at the impact of developments on OECD BEPS Two Pillar project from an India standpoint. There was an expectation that some announcements would be made in this Budget, especially in terms of a roadmap.

Could you share your thinking at this point regarding the way forward on alignment with BEPS proposals?

- Considering India's commitment to US to withdraw Equalisation levy ('EL'), there was an expectation of withdrawal/roadmap for transition from EL to Pillar One taxation. Further, pending withdrawal of EL, industry was expecting clarity on some of the issues around scope and coverage of EL.

The industry was also looking forward to the details of the transitional approach with US on 2% EL announced in November last year. Additionally, in view of the multiple representations on issues arising from EL provisions, is the government considering any guidance, such as FAQs, to be issued till the time Pillar One is adopted?

Mr. Mohapatra's comments

- India is an active participant of the BEPS Two Pillar project, and work is going on towards impact of the BEPS proposals on domestic statute. As and when the rules are finalized by

the Inclusive Framework and approved in the Multilateral Convention, India will bring in the amendments to domestic statute.

- In the press release announcing agreement between India and US on a transitional approach with respect to 2% EL, it was stated that the same terms that apply under the October 21 Joint Statement of US with 5 European countries shall apply between US and India. The arrangement shall be applicable from 1 April 2022 till implementation of Pillar One or 31st March 2024, whichever is earlier. India and US are in close contact to ensure a common understanding of the respective commitments. How EL will play out post 1 April 2022 is being worked upon.
- If need arises, guidance can be issued on the EL provisions at an appropriate time.

Virtual Digital Assets ('VDAs')

The Finance Bill, 2022 proposes to introduce a new section (*Section 115BBH*) to tax income from VDAs @ 30%. The definition of VDA has been provided (*Section 2(47A)*), which has a fairly broad scope. Could you share your thoughts on the potential scope of VDAs?

Further, what is the rationale for not allowing set-off of loss from transfer of VDAs?

Also, with regard to TDS on transfer of VDAs (*Section 194S*), the obligation cast on purchaser of VDAs to ensure tax has been paid before releasing consideration seems fairly onerous as the buyer/recipient of VDA may not have details of the seller. Could you let us know your thoughts on this?

Mr. Mohapatra's comments

- VDAs' are proposed to be taxed by bringing in a new provision under Chapter XII of the Income-tax Act. Significant research has been undertaken and the Department is looking into ways crypto and virtual assets are being generated, handled and traded across investors.
- The proposed provisions seek to bring in certainty regarding taxation and reporting of transactions in crypto and virtual assets. Being a new legislation in the sector, there will be issues in implementation of the provisions, including tracing and tracking of transactions undertaken.

- TDS will also raise issues such as identity of the seller, in case of transactions undertaken off exchanges. With regard to onerous responsibility on buyer to ensure tax is paid, certain exceptions have been provided in the proposed section.
- If the issues are anticipated and comprehensively documented within a few months, it would help in making the TDS provisions workable. A consultation will be conducted at an appropriate time with thought leaders and sector experts to come out with an SOP on administration of this regime.
- In respect of set-off of losses, set-off against any other head of income is not permitted. However, set-off within the same chapter, section, line of business or class of assets needs to be examined.
- Indexation benefit while computing capital gains is not available since taxation is proposed under a special chapter.

TDS/TCS provisions

Section 194R

The Finance Bill, 2022 proposes to introduce Section 194R, requiring deduction of tax @10% on provision of benefits or perquisites arising from business or profession. This has created potential concerns for taxpayers in term of scope of the section, valuation aspects and compliance mechanism in case of non-cash benefits/perquisites.

Could you throw some light on the above aspects? Also, in a scenario where benefits/perquisites are provided to a company's employee, is TDS compliance to be done in name of the employee or the company such employee is representing?

Mr. Mohapatra's comments

- The explanatory memorandum to Finance Bill provides an example of benefits or perquisites provided by pharmaceutical companies, which is an indication of the transactions that are sought to be covered under this section. Business promotion expenses, such as international tours or cash vouchers for achieving sales, which are covered under Section 28(iv) would be subject to TDS under Section 194R.

- The objective behind introduction of Section 194R is to capture data regarding benefits or perquisites provided by companies. It is a simple tax, like any other TDS provision. If the provision is not precisely worded, sharpening of the language can be looked into.

Multiplicity of TDS provisions

With the recent introduction of Sections 194-O (TDS by e-commerce operators) and 194Q (TDS on purchase of goods), the scope of domestic TDS has been steadily expanding over the past couple of years. This year also saw 2 new withholding provisions [TDS on VDAs (Section 194S) and benefits/ perquisites (Section 194R)]. There was an expectation that there could be streamlining of the TDS provisions this year.

In the spirit of ease of compliance, could something be done to streamline the overall scope of TDS provisions in times to come?

Mr. Mohapatra's comments

TDS is an excellent way of mapping tax profile of the taxpayer base. In the absence of TDS, transaction data will only be available after year end, when the return is filed, or accounts are submitted. Currently, the data is available as and when the transactions are undertaken, which enables the department to keep a track of businesses. Having said that, rationalization of TDS provisions can be looked into, with maybe a composite TDS capturing all sections and a monthly or quarterly compliance.

Dispute Resolution

Reassessments

Finance Act, 2021 had brought in significant changes in the reassessment provisions. This year's budget has proposed certain further changes in the reassessment provisions. Earlier, the 10-year time limit was triggered only in cases where the income chargeable to tax, represented in the form of an "asset", escaped assessment. Now, the scope has been expanded to allow issuance of reassessment notice up to 10 years on the basis of expenditure in respect of a transaction, event or occasion, as well as entries passed in books of accounts (Section 149).

While the intent behind revamping of reassessment provisions was to reduce compliance burden on taxpayers, this amendment seems to have expanded the same. Could you share your thoughts on this?

Mr. Mohapatra's comments

While unaccounted or unexplained investments were taken care off in the last budget, unexplained expenditure as covered under Section 69C was missed out. Accordingly, this amendment has been proposed to rectify the same. There is no intention to expand the scope of Section 149 or any other reassessment provisions in any manner.

Faceless Assessments

Section 144B sets out a detailed procedure to be followed in conduct of faceless assessments. Section 144B(9) nullified assessments made through the faceless assessment process if the prescribed procedure was not followed. The Finance Bill, 2022 has introduced several amendments in the procedure, including omission of sub-section (9).

While we understand the department's intent behind omission of sub-section (9), this may raise concerns for taxpayers regarding fairness of the assessment procedure and existence of procedural safeguards. How would you address this?

Mr. Mohapatra's comments

- Amendments proposed in the Budget replace the old Section 144B. Basis experience in the field, and advice of taxpayers, CAs and the Judiciary, a better framework for faceless assessments has been built. Giving right of personal hearing to taxpayers without any conditions and assigning of case back to assessment unit which prepared the draft order post review, as against a different assessment unit, are some of the significant changes.
- While sub-section (9) has been omitted from Section 144B, requirement to follow the prescribed procedure is implicit in the statute. Sub-section (9) thus still exists in spirit.

Reducing multiplicity of appeals before the High Court and Tribunal

The proposed Section 158AB provides for deferral of appeal by Revenue before ITAT/ High Court where identical question of law is pending adjudication before the High Court/ Supreme Court in the case of taxpayer or any other taxpayer. Can a similar benefit be extended to taxpayers as well?

Mr. Mohapatra's comments

This has been one of the solid attempts by the Department in last few years to reduce litigation. The Department is not in favor of filing appeals in case of issues already pending for adjudication before the High Court or Supreme Court. While a similar provision is currently not there for taxpayers, the counterparty in case of Department appeals would always be the taxpayer.

With the cooperation of taxpayers, Section 158AB will succeed, preventing frivolous and unnecessary litigation in future where identical issues are already pending adjudication.

Euroclear

There was an expectation of some provisions related to Euroclear in the budget, in terms of inclusion of India in the bond index. While we understand that this is being worked on, could you give an indication of the timelines and let us know if the industry can do anything to partner with the Government in this regard?

Mr. Mohapatra's comments

Euroclear is on the table and intense discussions took place during the budget session. The direction in which this would be taken would be made clear soon.