US·INDIA
STRATEGIC PARTNERSHIP FORUM

Post-Budget Memorandum on Tax Proposals under Finance Bill 2023

March 14, 2023

Post-Budget Memorandum on Direct Tax proposals under Finance Bill 2023

US·INDIA STRATEGIC PARTNERSHIP FORUM

1. Suggestions to improve ease of doing business in India

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
1.1.	**Address challenges on account of bringing non-resident investors within ambit of section 56(2)(viib) of the Act**	• Section 56(2)(viib) of the Income Tax Act, 1961 ('the Act') provides for taxability of receipt of consideration from any person being a resident, by a company towards the issue of shares in excess of the fair market value of the shares. • It is proposed to include the consideration received from a non- resident also under the ambit of section 56(2)(viib) of the Act by removing the phrase 'being a resident' from the said provision.	• Section 56(2)(viib) was first introduced *vide* the Finance Act, 2012 with an objective to deter generation and use of unaccounted money through subscription of shares of a closely held company, at a value which is higher than the Fair Market Value ('FMV') of shares of such company. The applicability of this section was originally restricted to shares issued to resident shareholders. • If one has to take into consideration the original objective for insertion of section 56(2)(viib) of the Act, there is no question of generation and use of unaccounted money in case of shares issued to non-residents since such consideration is received in line with the- foreign exchange control regulations and as per the banking channels. Therefore, it is recommended that the applicability of such section should not be extended to the non-resident shareholders. • Many legitimate transactions and companies are suffering due to the uncertainties created by the provision. For example, well-respected startups except those considered as eligible startups fulfilling certain conditions, excluded from the scope of section 56(2)(viib) of the Act, *vide* notification S.O.1131(E) dated 05 March 2019 issued by the Central Board of Direct Taxes ('CBDT') are facing tax demands, causing stress to entrepreneurs and giving pause to new potential investors till the demands are resolved (which can often take months or longer even while companies are running out of capital).

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
			• Another view is that expanding this provision to non-residents will level the playing field between foreign and domestic investors. Unfortunately, this too is untrue for the private equity and venture capital industry. Domestic Alternate Investment Fund's ('AIF's') have already been exempted from section 56 of the Act. If reputable foreign fund managers who are regulated in a Financial Action Task Force ('FATF') or Organisation for Economic Co-operation and Development ('OECD') jurisdiction or Sovereign Funds are not excluded from this provision (similar to how Indian AIFs are excluded), this has the potential to cause a chill in the funding from the global private equity and venture capital industry into India at a time when the environment is challenging enough for entrepreneurs and startups.
1.2.	**Ensure parity in tax treatment of Offshore Derivative Instruments (ODI) held by Banking units ('IBUs') in International Financial Services Centre ('IFSC')**	• IBUs in IFSC are permitted to issue ODIs. The income attributable to the investment division of the IBUs (which has been granted a Category I FPI registration) is taxable as under: - Exempt Income - Income specified under section 10(4D) of the Act; - Income taxable under section 115AD of the Act - Income from securities [not covered under section 10(4D) of the Act] and capital gains on transfer of equity shares in a company resident in India.	• As per the proposed provisions of section 10(4E) of the Act, in case of distribution of income to ODI holder, an exemption to the ODI holders shall be available only on so much of the amount distributed which is chargeable to tax in the hands of the IBU under section 115AD of the Act. • However, in scenarios where income is distributed to ODI holders out of income that is not subject to tax in the hands of the IBU [on account of exemption provided under section 10(4D) of the Act], the income shall become taxable in the hands of the ODI holders on account of non-satisfaction of the conditions prescribed under proviso to section 10(4E) of the Act proposed to be inserted by Finance Bill, 2023.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		• In respect of the ODIs issued by the IBUs, section 10(4E) of the Act was inserted by Finance Act, 2021 which provides an exemption to non-residents in the case of 'transfer' of ODIs entered with an IBU. • However, income distributed by IBUs to ODI holders (otherwise then by transfer of ODI) could currently be subject to tax in the hands of ODI holders – leading to double taxation. • Finance Bill, 2023 proposes to remove the above double taxation on income received by non-resident ODI holders by extending the exemption to any income distributed by IBUs on such ODIs - where such income is chargeable to tax in the hands of the IBU (under section 115AD of the Act).	• The above scenario could arise where the IBU has issued ODIs to non-residents ODI holders against investments in securities– the income from which is exempt under section 10(4D) of the Act. • The tax treatment provided to units of an IFSC registered as an Foreign Portfolio Investor ('FPI') is akin to the tax treatment provided to an entity based out of Singapore or Mauritius with respect to their investments in Indian securities, securities listed on IFSC exchange and investment in global securities. • The ODI holders of FPIs based in Singapore or Mauritius currently do not suffer any taxes in India. The burden of discharging any tax liability within the ambit of the provision of the Act / Tax Treaty is solely on the Singapore / Mauritius based FPIs. • Introduction of the proviso to section 10(4E) of the Act shall lead to FPIs set-up in IFSC being at a disadvantage *vis-à-vis* FPIs investing from Singapore / Mauritius. The additional compliance burden in the hands of the ODI holders (in absence of an express exemption) shall make this proposition highly un-attractive. • In order to provide the same tax treatment to non-resident ODI holders holding ODIs in offshore locations and those holding ODI in IBU and to bring the ODI business to IFSC in India from offshore jurisdictions, exemption should be provided to the non-resident ODI holders in respect

US·INDIA
STRATEGIC PARTNERSHIP FORUM

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
			of all incomes distributed by the IBU on the ODI contracts whether or not the income remain taxable in the hands of the IBU.
1.3.	**Bring clarification on taxation of debt repaid to unit holders of Business Trusts**	• The Act provides a pass-through status to Infrastructure Investment Trusts ('Invits') and Real Estate Infrastructure Trusts ('Reits') for interest income, dividend income and rental income received from a special purpose vehicle. Such income is taxable in the hands of the unit holders. • Distribution by Business Trusts in form of debt repayment / proceeds from amortization of debt are capital payments and not regarded as income in hands of unit holders. • Finance Bill, 2023 proposes that any sum received by the unit holder which is not in the nature of interest, dividend or rental income will be taxable as income from other sources in the hands of the unit holder. • Invits and Reits are mandated by SEBI to distribute at least 90% of the cash available to unit holders. Considering the nature of	• Debt repayment / proceeds from amortization of debt and redemption of units are repayment of capital/return of principal and therefore a transfer of units which is capital in nature and should not be regarded as income in the hands of unit holders. The distributions received on debt repayment / proceeds from amortization of debt and redemption of units should be taxable as capital gains, if taxed at all. • Without prejudice to the above, under the current proposal, there is a possibility that the unitholder may have to pay tax on the gross receipts without adjusting the total amount of loan granted as the proposed provisions are silent on this aspect. Accordingly, there is a need to clarify that value of original loan would be adjusted against loan repaid and only differential amount would be subject to tax as income from other sources.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		business of Special Purpose Vehicles ('SPVs') in which the Business Trusts invest, dividend payment is generally not possible due to lack of profits at SPV level. Consequently, the Business Trusts generally resort to distribute cash in form of interest or repayment of debt. Interest payment is also typically limited to the coupon rate. • If the budget proposal is implemented, the tax cost on investors on distributions received in the form of repayment or amortization of debt will be disproportionately high compared to other modes of distribution. • Any loans repaid by the SPV to the Invit/Reit are already reducing the cost basis of the Invit/Reit in the SPV and when the Invit/Reit sells the SPV, the tax paid is on the lower cost on account of loan repayments – therefore the tax amount is higher. Under the proposal, the debt amortization amount will be taxed as ordinary income and at the time of sale,	

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		capital gains tax will be calculated on a lower cost basis (cost reduced on account of loan amortizations). Thus, the proposal will lead to taxing the same cash flow stream twice. • The key issue is whether repayment of debt should be considered taxable in the first place. Repayment of debt should not be taxed and must be treated as an adjustment to the cost of acquisition of units. The amount so distributed does get taxed eventually at the time of transfer or sale of units. This proposal is in line with the proviso related to redemption of units.	
1.4.	**Promote timely payments to Micro and Small Enterprises by enabling portal to track registration status**	• Section 43B of the Act provides that certain deductions shall be allowed only on actual payment. • In order to promote timely payments to micro and small enterprises, it is proposed to include such payments under the ambit of section 43B and provide that any sum payable by the taxpayer to micro and small enterprises beyond the time provided under section 15 of the Micro, Small and	• Considering the large scale of business which involves voluminous transactions with numerous/several vendors, it becomes difficult to identify and keep a record of such vendor's registration as micro or small enterprises, particularly in cases where the registration changes from micro or small to medium enterprises. • In order to streamline the identification process, it is recommended to provide taxpayer with an interface or a portal wherein it can identify the type of registration of such vendor on a real-time basis (similar to interface provided for checking eligibility of section 206AB) based on Permanent Account Number ('PAN') allotted to the vendor.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		Medium Enterprises Act, 2006, shall be allowed as a deduction on actual payment.	
1.5.	**Suggestions towards preventing permanent deferral of taxes through undervaluation of inventory**	• In order to ensure that the inventory is valued by a taxpayer in accordance with various provisions of law, it is proposed to amend section 142 of the Act to enable the Assessing Officer to direct the taxpayer to get the inventory valued by the cost accountant (appointed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or the Commissioner) during the course of assessment proceedings. • Further, section 153 of the Act is proposed to be amended to exclude the period for inventory valuation through the cost accountant for the purposes of computation of time limitation.	• Considering the timeline provided under section 153 of the Act, the assessment proceedings are usually concluded within 24 to 36 months from the end of the financial year. • Referring the matter to the cost accountant during the course of assessment proceedings may pose challenges in valuing the inventory which was recorded at the end of the financial year. • Accordingly, in order to ensure proper valuation and timely conclusion of assessment proceedings, it is suggested to provide guidance/circular which can be followed by both the assessee and the assessing officer.
1.6.	**Address challenges arising from proposed increase in Tax Collection at Source ('TCS')**	• Several technology companies in India headquartered in USA have an Employee Stock Purchase Plan or similar other plans with different nomenclature ('ESPP'), a common practice to retain talent and incentivize employees commensurate with growth of company's market value.	• Given the above proposed increased in rate from 5% to 20% will have significant adverse impact on employees in India, it is prayed as follows: a) To provide for suitable amendment in section 192(2B) to include declaration of TCS for the employees for consideration for determining the withholding tax rate on salary income by the employer; and

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
	rate on remittances under Liberalized Remittance Scheme ('LRS')	• Such ESPP generally has the following characteristics / mechanics: i) Eligible employees of the Indian Companies ('Employers') are given an option to purchase stocks i.e. shares of the Overseas listed parent companies ('Overseas Holding Companies') of Employers at a certain discount to market price of such shares up to specified limits. ii) The employees' contribution for purchase of shares under the ESPP is contributed from the post-tax salary of the employee, i.e. salary on which tax is already withheld under Section 192 of the Income-tax Act, 1961 ('Act'). iii) The discount provided by Overseas Holding Companies is taxed as a 'perquisites' under section 17(2)(vi) of the Act in the hands of the employees and Employers withhold applicable tax under Section 192 of the Act. iv) The amount of employees' contribution is collected by the Employers and then remitted	b) To suitably amend Rule 26B to allow employees to declare TCS for consideration of withholding tax rate on their salary income by the employers. **Or** c) To provide for suitable amendment in sub-section 1G of Section 206C of the Act to enable AD Bankers to not collect TCS on employees' ESPP contributions to be remitted to Overseas Holding Companies, provided such contribution by employees from their salary is considered for tax withholding by Employer under Section 192 of the Act. • Alternatively, it is recommended to provide a mechanism for Central Board of Direct Taxes ('CBDT') to issue guidelines for removal of difficulties.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		to Overseas Holding Company via Authorized Dealers ('AD Bankers'). AD Bankers take requisite information / documents from Employers for processing this remittance in compliance with India Exchange Control Regulations and the Act. v) Vide the recently presented Finance Bill 2023, it has been proposed to enhance the existing TCS rate on remittances under Liberalized Remittance Scheme ('LRS') (other than for medical or education purposes) from 5% to 20% without any threshold limit. vi) Thus, AD Banker will have to collect and deposit TCS at 20% instead of 5% on employees' contribution amount (irrespective of any threshold) against PAN of such employees. While this amount is already subject to tax withholding under Section 192 of the Act by the Employer. **Tax withholding by the employer and declaration of other income by the employees**	

US·INDIA STRATEGIC PARTNERSHIP FORUM

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		• Section 192(2B) of the Act read with rule 26B of the Income Tax Rules, 1962 ('Rules') provide a mechanism wherein the employee can submit details of income earned under any other head of income and the tax deducted thereon for computation of average withholding tax rate on the salary income earned by such employee. • The employer on receipt of such declaration may consider the details of income and tax deducted on such other income as submitted by the employee for computing the withholding tax rate under section 192. • However, the current provisions of Section 192 of the Act read with the Rules do not provide for consideration of TCS on the remittance made by employees for consideration of withholding tax rate by the employee as the extant law only provide for considering 'other income' and 'tax deducted' thereon for computing the withholding tax rate by the employer and not any kind of TCS.	

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		As per current provisions of the Act and Rules and as per proposed amendment to TCS Provision of the Act under Finance Bill, 2023: i) For an employee opting to purchase the shares of the Overseas Holding Company under the ESPP discussed above, TCS at rate of 20% (instead of current rate of 5%) would be collected by the Employer alongwith employees' ESPP contribution. ii) Such TCS shall be remitted by Employer to AD Banker (alongwith employee contribution of ESPP) for compliance with TCS provisions and issue of TCS Certificate in name of the employees by AD Banker. iii) This would mean that employees' contribution under ESPP shall be subject to applicable tax withholding under Section 192 of the Act by Employer as well as TCS @20% by AD Banker under Section 206C(1G) of the Act instead of current lower rate of 5%.	

2. Measures to reduce tax litigation

S. No.	Topic	Issues/Rationale	Suggestions/Recommendations
2.1.	**Ensure ease of compliance for claiming tax refunds**	• It is proposed to insert sub-section (20) under section 155 of the Act to provide that where any income is included in the return of income filed by the taxpayer and the tax on such income is deducted and paid to the credit of Central Government in any subsequent year, the taxpayer can file an application in the prescribed form within a period of 2 years from the end of the year in which such tax was deducted, to avail the credit in the same year in which the income is offered to tax. • Further, section 244A of the Act is proposed to amend to provide interest on refund pursuant to application filed under proposed section 155(20) of the Act which should be computed from the date of such application to the date on which the refund is granted.	• As per section 199 of the Act read with Rule 37BA, any taxes deducted and paid shall be treated as payment of tax on behalf of the person from whose income the deduction was made. In case where the assessee has duly offered the income to tax and the only issue is with respect to the year in which tax credit corresponding to the same has to be granted, considering the fact that the tax rates applicable for the years under consideration are uniform, the tax credit claimed by the assessee should not be questioned. Therefore, it is recommended that the taxpayer as well as the tax authorities should not be placed with an additional burden of filing and verifying an application to claim a refund of taxes deducted in the subsequent year. • Separately, the pre-condition for making an application under proposed section 155(20) of the Act is that the tax should have been deducted and paid to the credit of Central Government in the subsequent year. This may put the taxpayer in a grave of hardship in a case where the tax has been deducted but not deposited and for which the default is not on the part of taxpayer. Accordingly, even assuming such proposed amendment is enacted, it is recommended to modify the same to provide for only tax deduction in the subsequent year as a pre-condition for making an application under section 155(20) of the Act.

US·INDIA STRATEGIC PARTNERSHIP FORUM

S. No.	Topic	Issues/Rationale	Suggestions/Recommendations
2.2.	**Address hardships caused to taxpayer by withholding of refunds pending conclusion of assessment**	• It is proposed to merge section 241A and 245 of the Act in the matter of adjustment of refund against past demands or withholding of refund till completion of assessment. Post amendment, the refund can be withheld not only for pending assessment but also for pending reassessment. • Furthermore, the refund can be withheld not only for pending assessment/reassessment for Assessment Year ('AY') to which refund pertains but for any other AY. Both before and after amendment, there is no adequate opportunity given to taxpayer for being heard before adjusting against past demand or withholding. Taxpayer will be merely given intimation of such action.	• Practically, refunds are adjusted against demands even where stay has been granted in terms of CBDT instruction or by Tribunal. • By proposing the amendment allowing set-off and withholding of refunds, powers of Assessing Officer ('AO') is expanded to withhold any refund due to taxpayer if in his opinion grant of refund is likely to adversely affect the revenue (post taking prior approval of Commissioner). The amendment will result in withholding of refunds pending assessment/reassessment for one or other AY on perennial basis. • Even harsher amendment proposed is that if the refund amount is withheld pending assessment/reassessment and then released post completion of such assessment/reassessment, the taxpayer will not be entitled to additional interest @ 3% p.a under section 244A(1A) of the Act which is paid on delay in passing order giving effect beyond 3 months. It will be eligible for normal interest @ 6% p.a. • It is necessary to insert provision for giving adequate opportunity of hearing to taxpayer before taking action of adjustment or withholding. Further, the power of AO should be restricted to only in case of refund due in respect of the year for which proceedings are pending and not for other years. This will ensure that legitimate refund due to the taxpayer is not withheld.

S. No.	Topic	Issues/Rationale	Suggestions/Recommendations
			• Also, there is no warrant for the Government not paying interest for the period when refund is withheld pending completion of assessment/reassessment. The proposed proviso to section 244A(1A) of the Act denying additional interest @ 3% p.a. should be omitted. Alternatively, the refund withheld should be treated as regular payment of tax to reduce interest under section 234B @ 12% p.a. for the period from date of withholding till date of completion of assessment/reassessment. • Alternatively, given that the intention of the amendment is to protect the interest of the revenue, it may be recommended that such withholding of tax refunds should be done only under exception circumstances such as instances whether the taxpayer is a habitual defaulter.

3. Request for rationalisation of TDS/TCS provisions

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
3.1.	**Allow lower withholding certificate for Section 194R on benefits and perquisites**	Section 197 of the Act enables taxpayers to obtain a certificate for tax deduction at Nil or lower rate than specified tax rate under the Act. However, Section 194R on Tax Deducted at Source ('TDS') on benefits and perquisites is excluded from the scope of Section 197 and therefore taxpayers are unable to obtain a lower deduction certificate for Section 194R TDS.	• Section 194R provides for TDS deduction at the rate of 10%. For taxpayers incurring losses or having excess TDS credits, it impacts the working capital needs especially for Micro Small and Medium Enterprises ('MSMEs') as the rate of TDS is 10%. • It is recommended to include Section 194R within the ambit of Section 197 to enable taxpayers to file nil or lower withholding application.
3.2.	**Address ambiguities emanating from introduction of TDS on online games under section 194BA of the Act**	• Section 115BBJ is proposed to be inserted to the Act to provide for the taxation of winnings from online games. In line with the same, section 194BA has been proposed to be introduced in the Act with effect from 1 July 2023. • This section provides for withholding of tax at the rates in force on the net winnings in the user account of the receiver. The term online game as defined in the Explanation (iii) to proposed section 115BBJ provides for a wide definition to cover any game that is offered on the internet and is accessible to the user through a computer resource. Explanation to section 194 BA of the Act defines online gaming intermediary as '*(b) "online gaming intermediary" means an intermediary that offers one or more online games;*'	• It is quite a routine business practice for companies to have festive contests as a promotional campaign. These are not run with the intention of offering any online gaming facilities. • To ensure abundant clarity, we recommend that - definition of online gaming intermediary in section 194BA of the Act be suitably amended to clarify that scope covers intermediaries that are in the business of providing online games - clarifications are issued or amendment is made to the definition of the term 'online game' to make such provisions applicable only to the businesses which are being undertaken with a primary intention of

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
			providing a gaming platform to the end-users, or are in the business of online gaming.
3.3.	**Provide clarity to exclude writing off of trading debts and advances from TDS obligation under section 194R of the Act.**	• It has been proposed to amend Section 28(iv) of the Act and section 194R to bring cash benefits and perquisite within the scope provisions. This effectively overturns the Hon'ble Supreme Court in Mahindra and Mahindra (93 taxmann.com 32). • However, the above proposed amendment will create issue particularly in case of writing off of trading debts and advances. The Bad debts written off will be considered as income under section 28 (iv) of the Act and consequently TDS provision of section 194R of the Act may be required to be complied with by the person who is writing off the bad debts. This will lead to situation were on one hand person is not able to recover the amount due and additionally the person is requiring depositing TDS from his account, which results into additional burden. This should not be intent of the above proposal.	• CBDT has recognised this issue and accordingly *vide* Circular No. 12/2022 has granted exemption from TDS under section 194R of the Act for bad debts written off, however, only by certain categories of banks/financial institutions. It is important to note that writing off of trading debts and advances by other class of taxpayer also results into additional financial burden. • Accordingly, clarification should be issued that writing off of trading debts and advances shall be outside the scope of section 194R of the Act.
3.4.	**Exclude TDS defaults on payments in kind from prosecution provisions**	• It is proposed to amend section 271C and section 276B of the Act to provide that failure to ensure payment of taxes where payment is wholly or partly in kind (cash component being insufficient to meet TDS on whole amount) can trigger both penalty and prosecution. This will cover TDS on lottery winnings under section 194B of the Act, TDS on business perquisites under section 194R of the Act, TDS on Virtual	• In other laws, the Government is decriminalising certain administrative defaults. Even in Income tax, it is proposed by the Finance Bill, 2023 to decriminalise certain administrative tax compliances by liquidator of company. However, the proposal to criminalise TDS default for payments in kind is a step in reverse direction of decriminalisation. There could be various controversial

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		Digital Asset ('VDA') under section 194S of the Act and new TDS provision on online game winnings under section 194BA of the Act. • So far, the tax policy has been that failure to deduct tax will attract penalty but not prosecution. Prosecution is attracted only if there is failure to pay taxes which are already deducted/collected – since such monies are held as agent for the Government. This policy will continue for payments in money but failure to deduct tax on payments in kind will henceforth attract prosecution in addition to penalty.	issues on TDS on payments in kind on whether a particular item constitutes benefit or perquisite, what should be its value, etc. Criminalising such defaults will merely lead to increase in litigation and adversely impact ease of doing business. • Hence, it is strongly represented that failure to deduct tax on payment in kind should be treated at par with failure to deduct for payments in cash and should not be prosecuted.
3.5.	**Allow extension of concessional tax regime for External Commercial Bond ('ECB') and INR Bonds**	• Section 194LC of the Act provides for a concessional tax rate of 5% on interest income arising to non-residents in respect of monies borrowed in Foreign Currency ('FCY') up to 30 June 2023 or in respect of monies borrowed by way of issue of rupee (INR) denominated bonds up to 30 June 2023. • Similarly, section 194LD of the Act provides for a concessional tax rate of 5% on interest income arising to FPIs on specified securities (i.e., rupee denominated bonds of an Indian Company and Government Securities – hereinafter referred to as 'specified securities') up to 30 June 2023. • These concessions have been available since 2012 and 2013 for ECBs and INR Bonds respectively, and have been instrumental in growing these markets. From 1 January 2018	• It is suggested to extend the period of beneficial tax rate of 5% specified in section 194LC and section 194LD of the Act beyond 30 June 2023 without any specific sunset date. • Alternatively, where the above suggestion is not feasible, it is recommended to grandfather interest income with respect to all instruments covered under section 194LD of the Act and issued up to 30 June 2023 and make them eligible for 5% tax rate for future coupons as well. • Another alternative recommendation is that a staggered rate hike be made from 5% to 10% in respect of interest income under section 194LD and 194LC given that the rate of 10% is also applicable for specified funds as defined in section 10(4D) of the Act. Further, the said rate

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		to 30 September 2022, ECBs raised by Indian borrowers was more than $171bn (INR 14 lakh crore at current exchange rates), out of which over $42bn was through the FCY Bond route, with over $24bn raised in tenor seven years and beyond. Similarly, from 1 January 2018 to 30 September 2022, total inflow through the FPI channel in local debt markets was more than $181bn (INR 15 lack crore) • The Finance Bill 2023, does not propose to extend this concessional TDS regime. Accordingly, such interest income paid to non-residents will be chargeable at a tax rate of 20% (plus applicable surcharge and cess) (reduced by relevant Double Tax Avoidance Agreements ("DTTA") where applicable) instead of the current concessional rate of 5% (plus applicable surcharge and cess). • The proposed change can have an adverse impact on foreign investor debt flows. It will either result in higher borrowing costs for Indian borrowers (if they are grossing up TDS) or lower returns for international investors (if they are absorbing TDS); making these borrowing/ investment avenues less attractive. This will hamper the nascent investment recoveries and availability of foreign capital to fund medium/ long-term investments. – FCY Flows (ECB channel): While ECB funding via GIFT City may still happen through the loan market, only 17 banks	of 10% should also be applicable in respect of interest income on rupee denominated bonds of an Indian company without any cap as is currently prescribed under Section 194LD of the Act.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		have a presence in GIFT, limiting the benefit of preferential WHT only for FCY loans extended by such banks. – Further, the FCY Bond market will face a severe setback. WHT on the FCY Bond coupon may not get the benefit of DTAA as end investors are spread across jurisdictions, so borrowers may need to account for WHT to the full extent of 21.84%. FCY Bond market has provided access to global liquidity pools for long-tenor financing across sectors, structures, and credit ratings suitable for funding capex / projects with long gestation periods and helped diversify funding sources for Indian borrowers. Higher WHT will severely impact access to this FCY Bond market for Indian issuers. As mentioned From 1 January 2018 to 30 September 2022, ECBs raised by Indian borrowers was more than USD 171 Bn. (INR 14 lakh crore at current exchange rates), out of which over USD 42 Bn. was through the FCY Bond route, with over USD 24 Bn raised in tenor seven years and beyond through FCY bonds. Similarly, from 1 January 2018 to 30 September 2022, the total inflow through the FPI channel in local debt markets was more than USD 181 Bn. (INR 15 lakh crore). – INR Flows (FPI channel): FPI are a core source of liquidity for macro credit, event-driven and structured financing. FPI investors support credit requirements across the rating spectrum and end uses, thereby providing issuers funding	

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		access that is otherwise non-eligible via the ECB route (bond or loan). Higher WHT would lead to higher costs for borrowers or make it less attractive for investors (if they were to absorb the WHT), resulting in reduced attention from overseas investors. – Impact on INR liquidity and Foreign Exchange rates: Capital flows, including via the ECB channel, have been an essential driver of foreign exchange reserve accumulation and INR liquidity. Reduced flows via the ECB channel can adversely impact capital flows, dampening the funding capacity of the current account deficit and weakening the INR. The maturity profile of India's external debt is front-loaded, resulting in concomitant rollover risks. Out of total external debt of USD 617 Bn, over USD 273 Bn. has a residual maturity of less than one year as per the latest available data from the RBI. Additionally, reduced USD flows can tighten INR liquidity raising borrowing costs locally and adversely impacting a nascent investment recovery cycle. Structural INR liquidity has dwindled from a peak of INR 12 lakh crore to less than INR 2 lakh crore, and capital account inflows would augment this. – This measure will also impact the flow of Green/Sustainable Financing, which are primarily from offshore investor pools - global bond issuance volume since 2018 under the sustainable financing theme is above $2.9 trillion; during a	

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		similar period, the FCY bond issuance under ECB route for the same theme from Indian issuers has been more than $9bn. **Examples from other Asian economies** – Thailand: Regulations facilitate the setting up of "Treasury Centres" to manage FCY funds for group companies in Thailand, exempt from WHT. If an entity were to issue outside these, the onshore tax rate would be 15 per cent. However, nil tax is imposed for bringing bond issuance proceeds into Thailand, which is neither considered revenue nor profit. In summary – there are no WHT implications for borrowers bringing funds onshore from the international bond markets. – Indonesia: Issuers may issue out of their Indonesia entities or a Special Purpose Vehicle (SPV). As per regulation, the Issuer would have to collect WHT for the coupon paid, and hence for an offshore bond, where investors received net interest, the Issuer would need to gross up WHT. Indonesian borrowers frequently used SPVs to take advantage of tax treaties and were based in a jurisdiction with 0 to 10 per cent WHT. Subsequently, the 'Omnibus Law' amended the tax gross to 10 per cent, similar to the WHT in tax-friendly jurisdictions. Subsequently, most issuers now borrow from their Indonesia-domiciled entities, with WHT at 10 per cent.	

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		• While technically tax deducted in India may be eligible for claiming credit against corporate tax liability in the country of residence, practically, actual amount of tax credit may be negligible considering that the tax credit is restricted to the tax actually suffered in the country of residence. • Further, the provisions of section 194LD of the Act also provides that the rate of interest in respect of rupee denominated bonds of an Indian company shall not exceed the rate as the Central Government may, by notification in the Official Gazette, specify. Accordingly, where the interest rates on rupee denominated bonds of an Indian company exceeds the 500 basis points over the base rate of SBI as provided above, the FPI shall not be eligible for concessional tax rate of 5% under the provisions of section 194LD of the Act and would be subject to tax at the rate of 20% under section 115AD of the Act. • Providing a cap on the interest rate limits the type of securities that can be covered under section 194LD of the Act and thereby restricts the participation of FPIs in the corporate debt market.	

Post-Budget Memorandum on Indirect Taxes proposals under Finance Bill 2023 (Customs)

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
1.	**Reconsider increase in customs duty on toys**	• The increase in import tariffs for toys announced in Union Budget 2023-2024 now puts toys and children's product on the same tariffs level as tobacco and alcohol. Comparatively, other emerging economies levy an average of 20% in import tariffs for toys. • Toys are essential for growth and development of children. They are not only sources of entertainment but also educational tools that help children learn and develop various skills. Increasing the tariffs on toys will not only affect the affordability of these products but also may hinder the growth and development of children. • Generally, increases in tariffs will negatively impact the toy industry, which provides employment to many individuals and contributes to the economic growth of the country. The high tariffs will make it difficult for toy manufacturers and suppliers to bring in new and innovative products, which will in turn limit the choices available to consumers. • In the short term, higher tariffs can help to protect the local toy industry by making it more difficult for foreign competitors to sell their products in the domestic market. This can lead to higher demand for domestically produced toys, which can result in increased sales and	It is recommended that the decision to further increase the duty rate on toys be reconsidered, and to find alternative ways to generate revenue that do not negatively impact the growth and development of children and the economy.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		profits for local toy manufacturers. However, in the long term, high import tariffs can have detrimental effects on the local toy industry and the broader economy. • The increased cost of imported toys can make them less accessible and affordable to consumers, particularly low-income families who may rely on imported toys as a more cost-effective option. This can lead to a decline in the demand for toys and a reduction in sales for both local and foreign toy manufacturers. • Moreover, high import tariffs can create a less competitive environment, which can stifle innovation and hinder the growth of the local toy industry. Without the pressure of foreign competition, local toy manufacturers may become complacent and may not be incentivized to invest in research and development, improve their products, or innovate new ones.	
2.	**Amendment allowing filing of appeal against determination/ review of levy of safeguard duty, countervailing and anti-dumping duty**	• Finance Bill 2023, proposes to amend Section 9C to allow filing of appeal only against determination/review of levy of safeguard duty, countervailing and anti-dumping duty. • This section is proposed to be amended retrospectively from 1/1/1995.	We recommend that the amendment should be made prospectively.

US·INDIA
STRATEGIC PARTNERSHIP FORUM

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
	to be considered prospectively	• A retrospective amendment would nullify many decisions passed by courts in favour of assesses.	
3.	**Allow input tax credit of CVD/SAD**	• Where exporters are not able to fulfil the export obligation in respect of advance authorisations, they are required to pay customs duties (which includes BCD/CVD & SAD) on the raw materials imported duty free. After implementation of GST, on any such payment, no input tax credit is being permitted on CVD/SAD. • Further, there is no scheme for refund of CVD paid on old advance authorisations.	• Input tax credit should be permitted on CVD/SAD paid and credit should be permitted to be availed in the electronic credit ledger based on the TR 6 challan. • Alternatively, instead of CVD/SAD, importers can be asked to pay IGST by suitably amending the notifications relating to Advance authorization / FTP provisions. • In both the above cases, TR 6 challan should be allowed as a document on which credit of IGST paid can be taken. • If credit is not allowed, the exporter should be allowed to take refund under Section 11B of the Central Excise Act.
4.	**Request to increase customs duty rates on Ethyl acetate**	• Under the Singapore FTA, import of Ethyl acetate suffers 0% duty whereas Acetic acid which is used as input in manufacture of Ethyl Acetate is subject to 5% duty • Hence, there is an inverted duty structure which needs rectification. • India is among the top 5 global producer and is a net exporter of ethyl acetate. India is dependent on Singapore for acetic acid imports.	Customs duty on Ethyl acetate needs to be introduced on par (that is 5% from 0%) with acetic acid.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		• In view of the lopsided FTA, the company which supplies the acetic acid as well ethyl acetate has a cost and logistic advantage. India is not able to compete with them.	
5.	**Allow exemption of IGST on Betaine HCL**	• Import of Betaine HCL which is a Feed Supplement and used in animal feed is being classified under Chapter 2923 and subject to Customs duty of 7.5% & IGST of 18%. • Also, the traders importing the said goods are required to pay GST of 18% on the supply within country. • The high rate of customs duty and GST is increasing the cost of the animal feed in the hands of the farmers and being resisted.	We recommend allowing IGST exemption by inserting HSN No 2923/2936 and also specifically mentioning the item Betaine HCL under the Description column of the IGST notification.
6.	**Reduce customs duty on Propionaldehyde from 7.5% to 0%**	• Propionaldehyde is a very important feedstock for Pyridine & Beta picoline which is currently liable to customs duty at the rate of 7.5%.	• We recommend reducing customs duty on Propionaldehyde from 7.5% to 0%. • This will reduce cost of the finished product which are chemicals/vitamins and make exports competitive.
7.	**Address difficulties in computation of duty on domestic clearances by**	• Presently EOUs are required to surrender the customs duty foregone on imported inputs used for finished goods cleared domestically and the duty has to be paid at the time of clearance.	• We recommend that the government should therefore amend suitable notification to provide for a fixed percentage of duty to be paid on domestic dispatches as an option to the supplier of goods. Also, a facility of payment of such duty on a monthly basis should be provided in the notification itself.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
	Export Oriented Units ('EOU')s	• The methodology of calculations of the duty payable for domestic clearances has created issues and delay in shipments. • Computation of this amount is very difficult in respect of each domestic dispatch, and this can also lead to potential disputes.	• It should also be clarified that for supplies to SEZ units/ Developers/ Deemed exports and Merchant exporters, no duty exemption needs to be surrendered.
8.	**Permit / condone the storage loss/ handling loss/ transit loss of volatile goods**	• Some quantity of goods such as Methylene Chloride, Acetone, methanol is lost during transit or storage due to its high volatile nature. • As goods are lost before reaching the EOU factory, customs duty is payable along with interest as per Notification No. 52/2003-Customs.	• We recommend suitable clarification should be issued in this regard permitting/ condoning the storage loss/ handling loss/ transit loss of volatile goods and there should not be any requirement for payment of Customs duty as per Notification No. 52/2003-Customs.
9.	**Clarify whether conversion of EOU unit would require de-bonding and payment of customs duties**	• Any unit can be converted into bonded warehouse by obtaining Registration under Section 58 and 65 of Customs Act 1962 • There is lack of clarity as to whether the conversion of EOU unit would require de-bonding and payment of customs duties.	• We recommend suitable clarification should be given as to whether the conversion of EOU unit would require de-bonding and payment of customs duties. • Also, clarification is required if exemption from Anti-Dumping duty is also available under MOOWR scheme
10.	**Allow full exemption of customs duties on all items procured by R&D based on a proper certification**	• R&D units are registered as DSIR units and partial exemptions are provided for specified items which are – – Imported or – Domestically procured	• We recommend that the government should consider granting full exemption of customs duties on all items procured by R&D based on a proper certification by the R&D head.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		• The exemption is granted over and above 5%. In effect, the rate of tax is 5% on such procurements but only on specified items • In case the items purchased are not in the specified list, full duty/tax has to be paid. • This partial exemption has increased the cost of R&D activities and resulted in huge accumulation of GST Input Tax Credit.	This will go a long way in reducing the costs of R&D in our country and ultimately the cost of the bulk drugs or dosage forms manufactured by using the R&D services.
11.	**Allow exemption from compensation cess on import of goods by SEZ Unit/Developer for authorised operations**	• Presently IGST is exempted on import of goods into SEZ. • Similar exemption is required for the compensation cess. As per Rule 27 of the SEZ Rules- Duty, Tax and Cess are exempt from payment on Import of goods.	Customs notification No 64/2017-Customs should be suitably amended to exempt compensation cess on import of goods by SEZ Unit/Developer for authorised operations.
12.	**Allow compliance relaxation for certain companies in advance filing before arrival of shipment**	• As per Section 46 of the Customs Act read with Notification 34/2021-Cus (NT) dated 29/3/2021 and Circular No.08/2021-Customs there is a requirement of advance filing before arrival of shipments. • For those Companies who are not using dedicated freight forwarder services and those who have multiple service providers or use Shipper account for imports, it is difficult to follow this Circular.	It is suggested that Government should allow one day in Advance plus day of arrival as free and instead charge late fee for subsequent days late filing.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
13.	**Revaluate provisions regarding confiscation of goods**	• As per section 113 (ja) of Customs Act, 1962, "*any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force*" is liable to be confiscated. • Confiscation would stop the export of goods and impact the trade.	The provision should be amended to provide recovery of the wrongly claim/remission with suitable penalty instead of confiscation.

Other procedural recommendations

- Re-assessment of bill of entries should be done on priority, wherever there is any request from the importer. A time period should be fixed in the law for re-assessment of the bill of entry.

- It is noticed that the procedures being followed by EOU for import, Bond maintenance, re-credits, etc. varies between different customs formations. We recommend that there should be a uniform implementation of law relating to EOU.

Post-Budget Memorandum – Indirect Taxes (GST)

US·INDIA STRATEGIC PARTNERSHIP FORUM

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
1.	**Bring clarification with respect to proposed insertion of penalty provisions under S. 122(1B) of the CGST Act**	• At the outset, a welcome MSME friendly decision taken by the GST council in its 47th GST Council meeting held on June 28 and June 29 of 2022, to extend the registration exemption threshold for online suppliers of goods as well as allowing the composition scheme to online sellers. • Currently, a very low number of small businesses operate online, and the relaxation of GST requirements for small businesses will accelerate movement of SMEs. This will allow millions of SMBs to come online and expand their reach while benefiting from increased efficiencies and easier access to capital. • In order to implement safeguards for the above extension of threshold exemption, the Union Budget 2023-24 has proposed to insert a new section to provide penal provisions applicable to e-commerce operators ('ECOs') in case of contravention of provisions relating to supply of goods/ services made through them by unregistered person or composition taxpayer. • Relevant extract of the proposed amendments is provided below: **<u>The Finance Bill 2023 proposed an amendment in S.122 of Central Goods and Service Tax Act, 2017 ('CGST Act') to penalize ECOs in case of specified offences, by inserting a new sub-section as follows:</u>**	• The provision should be amended to ensure that the penalties for non-compliances are only applicable to an ECO liable to collect tax at source under S. 52 of the CGST Act. *"(1B) ~~Any~~ Every electronic commerce operator, who is liable to collect tax at source under Section 52, who–* *(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;* *(ii) allows an inter-state supply of goods or services or both through it by a person, who is not eligible to make such inter-state supply; or* *(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,* *shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher."*

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		"(1B) Any electronic commerce operator who– *(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;* *(ii) allows an inter-state supply of goods or services or both through it by a person, who is not eligible to make such inter-state supply; or* *(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,* *shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher."* • In this regard, there are a few specific issues which need to be clarified. We have populated the same in the ensuing paras. ***Clarity required that the provisions would apply only to e-commerce operators liable to collect tax at source under S. 52 of the CGST Act.***	This will ensure that the compliances/ restrictions are mandated only for ECOs who are actually liable to collect tax at source under Section 52. • The proposed provision of S.122(1B) (i) indicates that only the notified category of unregistered persons should be allowed to sell on e-commerce platforms liable to collect tax at source under S. 52 of the CGST Act. Only in such case, the ECOs will not be liable to any penalty. Hence, the same should be clarified and if any process is to be followed by / restrictions are placed on the unregistered persons, the same should be clearly notified by way of a FAQ/ circular so that the ECOs are geared up to start allowing the unregistered suppliers of good to sell online. • As the proposed penal provisions treat specific cases as offences pertaining to unregistered persons, in order to ensure that the ECO is not liable to collect tax at source due to such unregistered person becoming liable to registration, a separate mechanism should be provided to the ECOs to verify the aggregate turnover of such unregistered online sellers.

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S. 122(1B) provides that “Any electronic commerce operator” is liable to penalty for offences specified in sub-clause (i) to (iii).
It is pertinent to note that in terms of S. 24(ix) of the CGST Act, registration is mandated for a supplier only if the supplies are made through an ECO liable to collect tax at source under S. 52 of the CGST Act.
There are cases where ECOs are not liable to collect tax at source under S. 52 of the CGST Act due to various reasons such as availability of two ECOs (ECO-1, ECO-2 model as clarified in Q28 of the TCS FAQs issued by CBIC) or in cases where the consideration is not collected by the ECO. Relevant extract of the FAQ is provided below:

<table>
<tr><td>S. No</td><td>Question</td><td>Answer</td></tr>
<tr><td>28</td><td>Under multiple ecommerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have</td><td>TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.</td></tr>
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– There should be a system-based process by way of which the ECOs are intimated:

1) On the aggregate turnover of the unregistered seller at the end of a particular month.

This can be setup as an intimation on a T+3 or T+5 basis where T = due date of filing of GSTR-8 by the ECO as we understand that the ECO will have to report supplies by unregistered sellers in GSTR-8 [refer proposed S. 122(1B) (iii)].

2) In case of any change in the status of registration of the unregistered sellers on their platforms, ie, the unregistered seller registers for GST.

Alternatively, in case of aggregate turnover crossing the exemption threshold, the seller’s PAN should be intimated to the ECOs for ensuring compliance.

– In case there are any preventive actions that are proposed to be taken by an ECO, then reasonable time such as T+5 days, should be provided to the to the ECO in order to take appropriate actions

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<table><tr><td></td><td>any GST information of the hotelier. Under such circumstances, Which e-commerce operator should be liable to collect TCS?</td><td></td></tr></table>
This will put onerous burden on such ECOs who are not even liable to collect tax at source in the first place.
Clarity needed on sellers exempted from GST registration
S. 122 (1B) (i) of the CGST Act states that an ECO is liable to penalty if it allows supply of goods or services or both through it by an unregistered person where such <u>unregistered person is not exempted from registration by a notification</u>.
While for service suppliers, Notification no 65/2017-Central Tax dated 15 November 2017 has been issued exempting them from registration even when they supply through an ECO, however, there is no notification that has been issued till date exempting unregistered persons supplying goods, from taking GST registration if supplied through an ECO.
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such as restrict the unregistered seller from making any further sales.
– Also, it should be clarified that penalty, if any, should be applicable only once the unregistered seller becomes ineligible (as per the proposed mechanism in Sr. no 1 and 2 above) for making sales through an ECO who is liable to collect tax at source under Section 52 of the CGST Act.
In any case, we recommend that the penalty provision proposed to be inserted vide S. 122(1B) of the CGST Act should be kept in abeyance, until the system-based process (as mentioned above) is implemented. In the absence of a system-based process, it would not be possible for the ECOs to track the turnover of the unregistered sellers and composite dealers for sales made on other e-commerce platforms, in order to ensure compliance.
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Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		• We understand that the threshold exemption in line with the GST Council's recommendation, will be extended even for supply of goods made over an e-commerce platform by an unregistered person. ***Mechanism to track compliances of sellers selling through ECOs*** • The proposed amendment presupposes that the ECOs have the tools necessary to monitor the status of online sellers on real time basis and are informed of any changes so that they can respond appropriately and promptly. • In the case of unregistered dealers, it is possible that the aggregate turnover of their sales on the platform and offline sales may exceed the prescribed threshold for registration under GST. • From a GST law perspective, it is the responsibility of the unregistered dealers to ensure that they comply with the GST regulations and register for GST under S 22 or 24 o the CGST Act. • In light of the aforementioned, the proposal to impose a penalty on the ECO for non-compliance brought about by an unregistered person owing to circumstances beyond of their control and knowledge will put an unfair burden on the e-commerce operator. By doing this, the goal of establishing a level playing field will be defeated.	

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
2.	**Clarify the scope of OIDAR services**	• Via **Budget 2023-24** proposal, definition of the term "Online Information Database Access and Retrieval services ('OIDAR')" has been proposed to be amended. • S. 2(17) of the Integrated Goods and Service Tax Act, 2017 ('IGST Act') is proposed to be amended to **<u>remove the condition of rendering of the said supply as it is essentially automated and involves minimal human intervention</u>**. • Extract of the proposed amendment are provided below: *(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply* ~~***essentially automated and involving minimal human intervention***~~ *and impossible to ensure in the absence of information technology and includes electronic services such as-* *(i) advertising on the internet;* *(ii) providing cloud services;* *(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;* *(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*	• We recommend a circular should be issued to clarify the scope of OIDAR services as the proposed amendment has significant ramifications on overseas digital suppliers. • We also recommend a revised Flyer should be issued by CBIC considering the proposed amendment.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		(v) online supplies of digital content (movies, television shows, music, and the like); *(vi) digital data storage; and* *(vii) online gaming;* • Currently for a service to be classified as OIDAR services under clause (17) of S. 2 of IGST Act, an essential condition is that the supply of such service must be essentially automated and should involve minimal human intervention. However, we understand with the proposed amendment, the scope of OIDAR services is proposed to be expanded. • S. 2(17) of the IGST Act already provide a list of services which qualify to be OIDAR services and with the proposed amendment, there is lack of clarity on the type of OIDAR services which would be covered under the proposed definition of S. 2(17) of the IGST Act. • With the removal of the condition of "essentially automated and involving minimal human intervention", some services which are not essentially intended to be OIDAR could potentially get classified as OIDAR services, for eg, (a) Services of professionals through e-mail/ call/ video call (b) Live webinars/ shows (c) Interactive online courses	

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The deletion of the condition therefore potentially creates more ambiguity than bringing in the required clarity in the law.
There is a need for a distinction to be drawn between services which cannot, by any means, be provided without the existence of information technology and where information technology is only acting as a medium for delivery.
In other words, both the conditions need to be satisfied for a service to qualify as OIDAR. This has been explained further in the table below:

<table>
<tr><td>Condition 1 – Service delivery is mediated by information technology – YES

Condition 2 – Service is impossible to render in the absence of information technology, given its nature - YES</td><td>Service qualifies to be OIDAR</td></tr>
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<tr><th>Sr. No.</th><th>Topic</th><th>Issues/Rationale</th><th>Suggestions/Recommendations</th></tr>
<tr><td></td><td></td><td><table><tr><td>Condition 1 – Service delivery is mediated by information technology – YES

Condition 2 – Service is impossible to render in the absence of information technology, given its nature - NO</td><td>Service <u>does not</u> qualify to be OIDAR.</td></tr></table></td><td></td></tr>
<tr><td>3.</td><td>Bring clarification on amended definition of “non-taxable online recipient”</td><td>• Finance Bill 2023 proposes to amend S. 2(16) of the Integrated Goods and Service Tax Act, 2017 (‘IGST Act’).

• S. 2(16) of the IGST Act provides the definition of the term “non-taxable online recipient”.

• The definition of non-taxable online recipient (‘NTOR’) has been proposed to be amended to make it mandatory for Online Information Database Access and Retrieval services suppliers to collect GST on all B2C supplies.

Relevant extract of the changes proposed is provided below:

(16) "non-taxable online recipient" means any <s>Government, local authority, governmental authority, an individual or any other person not registered and</s> unregistered person receiving online</td><td>It should be clarified that the OIDAR service provider is liable to pay IGST only on supplies where the recipient does not make available a GSTIN (other than recipients registered as a tax deductor).</td></tr>
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Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		information and database access or retrieval services ~~***in relation to any purpose other than commerce, industry or any other business or profession,***~~ *located in taxable territory.* ***Explanation - For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017"*** • The proposed amendment makes it mandatory for OIDAR suppliers to collect and discharge IGST on all supplies to unregistered persons and persons registered for tax deduction under S. 51 of the CGST Act. • Therefore, with the above amendment, the responsibility has been casted on overseas OIDAR service provider to check if the recipient is registered or not. • There is a need for clarity that wherever the recipient of service provides a GSTIN, the same shall be sufficient compliance on part of the OIDAR service provider to not consider it as a taxable OIDAR supply. a) **Scenario 1 - If the no GST number is provided by customer to overseas OIDAR service provider** – GST would be liable to be	

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		discharged by overseas OIDAR service provider under forward charge mechanism. b) **<u>Scenario 2 - If GST number has been provided by customer to the overseas OIDAR service provider</u>** – GST will be payable by the customer under reverse charge as per the provisions of S. 5(3) of the IGST Act.	
4.	**Allow ITC on Corporate Social Responsibility undertaken by taxpayers**	• Budget 2023-24 proposes to restrict input tax credit on Corporate Social Responsibility ('CSR') spends by the taxpayers. • Sub-section (5) of section 17 is proposed to be amended by inserting a clause (j) so as to specifically provide that input tax credit shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013. • Relevant extract of the proposal is as under: *"(b) in sub-section (5), after clause (f), the following clause shall be inserted, namely-* *(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;"*	• Keeping the above aspects in mind, it is fair to conclude that the CSR expenses is having a nexus with business as per section 16 of the CGST Act and thus it should be considered as business expense and ITC should be eligible. • Therefore, the proposal of Budget 2023-24 should be relooked at it and the restriction should not be imposed on taxpayer to avail ITC on it.

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		• Section 135 of the Companies Act, 2013, mandates certain classes of companies to spend a prescribed amount of their net profits on Corporate Social Responsibility (CSR) activities. The Act defines the criteria for such companies, the nature of CSR activities that can be undertaken, and the reporting and disclosure requirements. • As per the Companies Act, 2013, companies falling under any of the following categories must comply with the CSR spending requirements: a) Companies with a net worth of Rs. 500 crore or more, or b) Companies with a turnover of Rs. 1,000 crore or more, or c) Companies with a net profit of Rs. 5 crore or more. • Such companies are required to spend at least 2% of their average net profits for the preceding three financial years on CSR activities as specified in the Act. The Act also mandates that the companies must establish a CSR committee consisting of the board of directors, with at least one independent director, to oversee and implement their CSR policies. • Failure to comply with the CSR provisions of the Companies Act can result in penalties, including fines and imprisonment for defaulting officers.	

Sr. No.	Topic	Issues/Rationale	Suggestions/Recommendations
		• Therefore, CSR expenses, as mandated by Section 135 of the Companies Act, are aimed at promoting socially responsible business practices and ensuring that companies consider the interests of all stakeholders, including the community, the environment, and their employees, in addition to maximizing shareholder value. • By incurring CSR expenses, companies can contribute to the sustainable development of society, help address social issues, and build positive relationships with their stakeholders. CSR activities can range from environmental conservation and community development to education and healthcare initiatives. • While the primary objective of CSR expenses is to contribute to the greater good of society, companies that engage in such activities also stand to benefit in many ways. For instance, CSR activities can enhance a company's reputation, improve employee engagement and retention, strengthen relationships with suppliers and customers, and help mitigate business risks. • In conclusion, CSR expenses are not just a legal requirement, but also a way for companies to create value for society and build a sustainable business model that considers the interests of all stakeholders.	