



Date: 23rd September, 2020

Smt. Nirmala Sitharaman
Hon'ble Minister of Finance
Government of India
New Delhi – 110001

Respected Madam,

Subject: Request for taking up certain measures under Income Tax Act, 1961 in the backdrop of Covid-19 outbreak

The Covid-19 outbreak has shaken the world and uprooted normalcy everywhere. A new normal has emerged, which includes some compromises, lot of lifestyle changes and economic difficulties. Till now, the Government has been extremely proactive in taking various measures to help the economy deal with this situation. We sincerely appreciate the efforts by the Government in this regard especially the recently introduced Taxation and other Laws (Relaxation and amendment of certain provisions) Bill 2020.

In this letter, we wish to bring to your kind notice some measures and relaxations that can be taken up under the Income Tax Act, 1961 which will save the taxpayers from undue and unintended hardship. Our recommendations cover various provisions of the law and have been bifurcated into suitable subjects for ease of reference:

1. Easing of Compliance

1.1. Extension of timelines for filing of returns under section 139(1) of the Act

Current position: the deadline for filing the return of income for FY 2019-20 (AY 2020-21) was extended vide Notification No 35/2020 dated 24 June 2020 from its original deadlines. Subsequent to such extension, the dues dates stand as under:

Particulars	Due date
Income tax returns for all tax payers (including where audit under the Income-tax Act or any other Act is applicable) for AY 2020-21	30 th November, 2020
Tax audit report submission for AY 2020-21	31 st October, 2020



Hardships to tax payers:

- a) There are still many States in the country where lockdown has not been lifted. The number of containment zones are rapidly changing. Furthermore, there are restrictions on the number of staff members that can come to work. This has resulted into very low number of people working (out of) in offices in many organisations especially MSMEs and small corporates. This has crippled their ability to comply with the requirements of the audit and tax filing badly. Currently, they are focusing on their survival.
- b) Majority of the CA firms who carry out audits are small and medium sized firms having limited resources to work remotely and work from home. Further, audit is an activity that more often than not happens on the ground and in the premise of the audit clients. Lockdown and continuing fear of spread of virus has resulted in the audit process getting impacted considerably.
- c) To compute the self-assessment tax payable, the taxpayer needs to collate relevant information from multiple sources. The most common source to determine the amount of tax deducted at source is Form 26AS. The due date for filing e-TDS statements for Q4 of FY 2019-20 were extended till 31st July, 2020 and the credit of TDS are only now reflecting in Form 26AS. Reconciling them before the filing of returns is a considerable task, without which filing the tax returns would be impossible. Further, due to the lockdown, many entities have not yet filed their e-TDS statements for Q4 of FY 2019-20 and as a result, credit of TDS are yet to be reflected in 26AS of a large number of tax payers.
- d) The CBDT proactively extended the due date for filing returns of AY 2019-20 upto 30th September 2020. There are also notices / SMS / Mails being sent to non filers which require response / return to be filed. A lot of time and effort are being devoted to respond to the notices and file returns in such cases
- e) The Income Tax filing Java utilities which are relevant for AY 2020-21 were released on the following dates:

ITR Form	Java utility	Excel utility
ITR 1	08-07-2020	08-07-2020
ITR 2	20-07-2020	20-07-2020
ITR 3	04-09-2020	31-07-2020
ITR 4	08-07-2020	08-07-2020
ITR 5	Yet to be released	25-08-2020
ITR 6	Yet to be released	Yet to be released
ITR 7	Yet to be released	03-09-2020



Since the return filing utilities are released only now in some cases and some cases, they have not yet been released, adhering to the deadline of 30th November, 2020 is a very uphill task. The fact that even the Income tax department is facing challenges amidst the pandemic crisis which has led to long delay in issuance of the return utility proves that the situation is beyond everyone's control and needs a compassionate approach. It may be appreciated that like the Income tax department could not come out with the return utilities and schemas in time, the taxpayers also need some extra time cushion for filing the returns.

- f) Considering the difficulty being faced in conducting the Annual General Meeting, the Ministry of Corporate Affairs have extended the due date for holding the AGMs from 30th September to 31st December 2020. MCA's recognition of the hardship faced by Companies in conclusion of audits and holding the AGMs is a vindication of the fact that the difficulty created because of the Covid-19 outbreak is continuing to have its impact. With AGM due dates being 31st December, 2020 it would be almost impossible to adhere to the ITR filing due date of 30th November, 2020 in case of companies.

Our representation:

Considering all the above difficulties, it is recommended that the due date for filing of returns for all the taxpayers for A.Y. 2020-21 be extended to 31st March, 2021 and the due date for filing the tax audit report also be extended to 28th February, 2021. Consequently, the timeline for filing all the reports and certificates under the Act which fall due alongwith or in connection with the ITR filing due dates may also be extended to 31st March, 2021.

This will also mean taxpayers availing moratorium will get an extended time for payment of interest and claiming the deduction u/s 43B of the Act in AY 2020-21.

1.2. Extension of timelines for filing Transfer Pricing audit report and consequently the ITR for such tax payers

Current position: The due date for filing Transfer Pricing audit report in Form 3CEB and the ITR for such tax payers u/s 139(1) had historically been 30th November. This was, however not altered in the Notification No 35/2020 dated 24 June 2020.

Hardship to the tax payer:

In addition to the hardships mentioned in para 1, for preparation of Transfer Pricing documentation contemporaneous data of comparable companies are required. Once



the due date to conduct AGM is extended till 31st December, 2020, the possibility of those companies filing the annual return with Registrar of Companies also gets delayed and thereby availability of comparable data also becomes scarce. This would result into TP documentation being incomplete and thereby possibility of filing Form 3CEB also gets impacted.

Our representation:

The due date for filing of Form 3CEB and all the associated compliances like filing of Form 3CEAA be deferred to 31st March, 2021. The due date of filing Form 3CEAB which needs to be filed 1 month before the above due date be allowed to be filed on or before 28th February, 2021. Consequently, time limit for filing of Country by Country Reporting (CbCR) may also be extended.

1.3. Time limit for completion of assessments relating to AY 2018-19 was 30th September 2020. This due date was extended to 31st March, 2021. The due date for completion of assessments for AY 2019-20 is also 31st March 2021. It is recommended that the due date for completion of scrutiny for AY 2019-20 be extended to 31st July, 2021.

2. Improving Cashflows with businesses

2.1. Refund of Taxes: It is very encouraging that a step was taken to release Rs.1,01,308 crore refunds from 1st April to 8th September, 2020. A lot more refunds are stuck for procedural and other issues. Immediate steps have to be taken to address them and release the refunds. To demonstrate few examples:

2.1.1. When there are reliefs granted by ITAT or High Court and no further appeal is filed or relief is granted by Supreme Court, the order giving effect are not passed by AOs and refunds are pending because of that. A step maybe taken to identify all such matters and refunds maybe issued immediately for those taxpayers.

2.1.2. Further, if there are demands in a particular year and the appeal proceedings are ongoing, despite automatic stay after 20% of the demand is recovered, the rest of the refunds continue to remain unpaid, especially at CPC.

2.2. Levy of Interest u/s 234A of the Act for delayed payment of self assessment tax

Current position: The interest payable under section 234A is for delay in filing return. It is levied on self-assessment tax payable (after reducing all prepaid taxes) along with return. If there is no Self Assessment tax payable, no interest is payable under s.234A even if return is delayed.



b) In the past, whenever due date for filing return has been extended, the levy of interest under section 234A for failure to file return on time also gets consequentially deferred to the extended due date. However, the second proviso to the Notification No. 35/2020 dated 24 June 2020 precludes the normal operation of consequential impact of extension of return filing due date. It provides as follows :-

"Provided further that the extension of the date as referred to in sub-clause (b) of clause (i) of the first proviso shall not apply to Explanation 1 to section 234A of the Income-tax Act, 1961 in cases where the amount of tax on the total income as reduced by the clauses (i) to (vi) of sub-section (1) of the said section exceeds one lakh rupees"

d) The Press Release dated 24 June 2020 has explained the impact of above proviso as follows :-

"In order to provide relief to small and middle-class taxpayers, the date for payment of self-assessment tax in the case of a taxpayer whose self-assessment tax liability is upto Rs. 1 lakh has also been extended to 30th November, 2020. However, it is clarified that there will be no extension of date for the payment of self assessment tax for the taxpayers having self-assessment tax liability exceeding Rs. 1 lakh. In this case, the whole of the self-assessment tax shall be payable by the due dates specified in the Income-tax Act, 1961 (IT Act) and delayed payment would attract interest under section 234A of the IT Act".

Hardship to the tax payer: The hardships faced by the tax payers to stand on their ground and to comply with the requirements of the law have already been detailed. Additionally, we wish to bring to your kind notice the following points:

- a) The computation of self assessment tax requires the taxpayer to compile relevant information from various sources. The most common source is interest from banks. Due to extended timeline to file TDS return by 31 July 2020 and issue TDS certificate by 15 August 2020, most banks are yet to file their TDS returns – especially the smaller branches in smaller cities and towns. Further, taxpayers are facing difficulty in getting even interest accrual certificates from banks due to shortage of staff at banks. Senior citizens are prevented by government guidelines from moving out of their homes to visit banks or any other place. This has led to situations where Form 26AS has not been updated till 31 July 2020 and the taxpayers having original due date for filing their return by 31 July, are not in a position to determine the amount of tax deducted at source and their ultimate tax liability by this date.
- b) Current circumstances are extra ordinary in nature and levying interest on the taxes due is inappropriate. The interest is generally levied to compensate the time lapse that the Government has to be face due to delay in tax payments by the tax payers. However, in the current circumstance, the delay is not on account of reasons and conditions which are in control of the tax payer. It is completely



out of control of the tax payer. Further, for any delay in payment of taxes, Government is already compensated by interest u/s 234B and additionally charging interest for delay in filing the returns defeats the very purpose of extending the deadline of filing of returns.

Our representation:

There is no justification to distinguish those having self-assessment tax above Rs.1,00,000 and those having below that. It is an unfair distinction that has been cast and that too in unprecedented times. Therefore, it is recommended that such interest u/s 234A be not levied and the second proviso be suitably amended to align the date of charging the interest u/s 234A to the due date of filing of income tax return.

2.3. Non-levy of interest u/s 234C of the Act for AY 2021-22: Since all the businesses are struggling with the cashflows, paying advance tax in a quarterly manner as laid down in the Act is a difficult possibility. Therefore, the operation of interest u/s 234C of the Act for AY 2021-22 should be suspended and payment of advance tax at time during the year should be facilitated. In any case, interest u/s 234B of the Act would continue and is levied when atleast 90% of the taxes are not paid.

3. Providing relief to tax payers from unwanted hardship

3.1. CSR contribution as deduction u/s 37: Contributions made to relief undertaken to counter Covid-19 outbreak out of CSR funds of Companies can be considered as one-time deduction u/s 37 of the Act for AY 2021-22.

3.2. Arms Length Price tolerance range: Section 92C provides for tolerance range in case of difference between transaction value and arms length price. Such tolerance range has also been notified. It is recommended that the tolerance range be increased for AY 2021-22 as under:

- Wholesale trading – 3% (Currently 1%)
- Other cases – 5% (Currently 3%)

3.3. Safe harbour rules: A one time measure to reduce the Safe Harbour rate as provided in section 92CB read with rule 10TD by 3% across board wherever rates are prescribed and wherever percentages are prescribed reduce by 100 basis points across board for AY 2021-22.



- 3.4. Secondary TP adjustment: Enhance the time available for repatriating the primary TP adjustment amount into India from the existing 90 days to 180 days for all such dates that fall within FY 2020-21.
- 3.5. Residential Status, PE and POEM: Due to lockdown and travel curbs that were imposed, a lot of individuals overstayed in certain places than they envisaged. This would result in some people becoming residents in India for tax purpose. In order to address this, Circular 11 of 2020, dated May, 8th 2020 was released, whereby it was clarified that in the case of people overstaying due to the restriction from 24th March, 2020 till 31st March, 2020 would not be considered in calculating the residential status. It is recommended that this relaxation be extended for FY 2020-21 also till a particular timeline. Further, the other consequence of this is also that people staying in India and working could also create situation of they creating a Place of Effective Management or Permanent Establishment in India, which otherwise would not have taken place. In order to avoid that, the period of time from 24th March, 2020 to such period as deemed appropriate by Government, not be counted to determine PE or POEM. Such relaxation to be only provided where the stay alone has created PE or POEM exposure, which would not have been created otherwise. This is to ensure that there is no misuse of this relaxation.
- 3.6. Clarification in relation to concessional tax regime under sections 115BAA and 115BAB - Companies opting for tax regimes under section 115BAA and 115BAB will have to claim depreciation as per prescribed manner. However, manner of claiming depreciation has not been prescribed yet and therefore, companies are not in a position to carry out a comparative analysis before opting for the new regime.

In light of the various hardships highlighted above, we sincerely request you to kindly take necessary steps – whether by way of amendment to the law or by way of issuing necessary notifications to ease the hardships.



Thanking you,

Yours sincerely,

Suhas Paranjpe
President,
Bombay Chartered Accountants' Society

Ketan Mistry
President,
**Chartered Accountants Association,
Ahmedabad**

Rasesh Shah
President,
Chartered Accountants Association, Surat

Kumar S. Jigajinni
President,
**Karnataka State Chartered Accountants
Association**

Anshul Agarwal
President,
Lucknow Chartered Accountants Society

- cc. 1.** Hon. Shri Anurag Thakur, Minister of State, Finance
2. Shri P C Mody, Chairman, CBDT