



## Easwar Committee report on the simplification of various provisions of the Income-tax Act

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In October 2015, the Central Government constituted a committee under the chairmanship of Justice R.V. Easwar for simplification of the Income-tax Act, 1961 (the Act). The objectives behind forming such a committee were to study and identify the provisions of the Act -

- Which have given rise to litigation on account of interpretative differences
- Which impact the ease of doing business
- For simplification in light of the existing jurisprudence, and
- To suggest alternatives or modifications with a view to ensuring certainty and predictability in tax laws without substantially impacting the tax base or revenue collections.

Recently, the Easwar Committee (the Committee) issued its report containing recommendations on simplification of various provisions of the Act. The Committee has dealt with recommendations on issues which are simple and need immediate attention. The Committee has clarified that the more complex issues which require a more exhaustive and deeper review will be dealt with in the next batch of recommendations. The Committee has divided its recommendations broadly into two parts: (1) those requiring amendments to the Act and (2) those which can be

implemented through the issue of circulars/administrative instructions, etc. The recommendations of the Committee are summarised as follows:

### **1. Recommendations requiring statutory amendments in the Act**

#### ***1.1 Definition of capital asset***

The Act defines the term 'capital asset' to include property of any kind held by a taxpayer, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions.

Shares and other securities can be held either as capital asset or stock-in-trade/trading asset or both. However, the Act does not contain any specific guidelines as to the characterisation of any particular investment as capital asset or stock-in-trade/trading asset. While this characterisation is essentially a facts-specific determination, the absence of legislative guidance has resulted in a lot of uncertainty and avoidable litigation.

The Committee recommends to introduce a new Section 2(14)(aa) to provide that a capital asset shall include shares and securities held by a taxpayer for a period exceeding 12 months from the date of acquisition (other than those declared as stock-in-trade/trading asset in the return of income)

and the profits or gains arising from transfer of the same shall be taxable under the head 'capital gains'. Shares and securities which are held for a period not exceeding 12 months will continue to be capital assets as per the existing Section 2(14)(a) of the Act.

The Committee also recommends to introduce a new Section 45A to provide that where the profits or gains arising to a taxpayer from transfer of shares or securities held by him for a period which is less than 12 months and which have been offered to tax under the head 'capital gains', do not exceed INR5 lakh during the previous year, the Assessing Officer (AO) shall not treat such profits and gains as business income, provided the shares were not held as stock-in-trade.

Cases which are not covered by the above proposed amendment shall continue to be assessed on the basis of existing principles laid down by the courts and summarised by the Central Board of Direct Taxes (CBDT). It is recommended that the proposed amendment will take effect from 1 April 2017 i.e. Assessment Year (AY) 2017-18 and subsequent years.

### **1.2 Disallowance under Section 14A of the Act**

There has been a spate of litigation on the application of the Section 14A of the Act. Around 15 per cent of the tax litigation is attributed to the determination of expenditure relating to exempt income. The Committee recommends that suitable instructions may be administratively issued by the CBDT to the AOs that they should adequately record their satisfaction or otherwise in the assessment order while dealing with the applicability of the section.

The application of Rule 8D of the Income-tax Rules, 1962 (the Rules) sometimes results in an unintended outcome whereby the amount of such an expenditure exceeds the total amount otherwise claimed as expenditure. Sometimes the disallowance under Rule 8D of the Rules also results in the disallowance exceeding the exempt income. The Committee recommends that the law should be amended appropriately.

Income like dividend suffers economic taxation by way of Dividend Distribution Tax (DDT) and therefore in an economic sense cannot be construed to be exempt income. Such income, in the view of the Committee, having suffered DDT in the hands of the payer-company, should be treated as having been taxed in the hands of the recipient. The Committee recommends that the provisions of Section 14A should be designed to

appropriately reflect the principle of economic taxation. Accordingly, income which has been subject to DDT should be deemed to form part of the total income of the taxpayer for the purpose of the section. Other similar income, such as share of profit from a partnership firm should also be deemed to be part of the total income for the purposes of Section 14A of the Act.

In some cases disallowance of interest is made on the ground that the borrowings are made in relation to exempt income even where the taxpayer on the basis of the books of account and other records is able to demonstrate that the borrowings were not used to make investments earning tax-free income. The Committee recommends that this situation can be taken care of by the CBDT by issuing suitable instructions to the AOs and no statutory amendment is necessary in the Act.

### **1.3 Rationalisation of the provisions for maintenance of books of accounts and tax audit**

The provisions relating to maintenance of books of accounts and audit are not fully aligned; there is a category of persons who are required to maintain books of accounts but not get them audited. Accordingly, the Committee recommends the alignment of the two provisions. It is recommended that the threshold limit may be revised from the present INR1 to 2 crore for taxpayers carrying on business and from the present INR25 lakh to INR1 crore for taxpayers exercising a profession.

### **1.4 Increase in the threshold limit for eligibility of a presumptive taxation scheme**

The existing presumptive income scheme under Section 44AD of the Act is applicable to an individual, Hindu Undivided Family (HUF) or a partnership firm (not to a limited liability partnership). This scheme is quite popular amongst small businessmen who declare their income at 8 per cent of the total turnover or gross receipts of the previous year. The limit of threshold for eligibility of the presumptive taxation scheme was raised from INR60 lakh to INR1 crore by the Finance Act, 2012, with effect from AY 2013-14. Keeping in view the popularity of the scheme and its impact on ease of doing business, the Committee recommends that the existing limit of INR1 crore be increased to INR2 crore. Consequential amendments in Section 44AA of the Act have already been recommended.

It was also brought to the notice of the Committee that small taxpayers who are not declaring income as per the presumptive income scheme find it difficult and cumbersome to maintain accounts. It is therefore recommended that a de *minimus*

provision should be made exempting small businessmen and professionals from the mandatory requirement of maintaining books of accounts and getting them audited.

### **1.5 Presumptive income scheme for professionals**

The existing scheme of taxation provides for a simplified presumptive income scheme for persons engaged in business. The Committee was of the view that this scheme is quite popular amongst small traders. There is a strong case for introducing a similar simplified presumptive income scheme for professionals. Accordingly, the Committee recommends the introduction of a presumptive income scheme whereby the income from profession will be estimated to be 33 $\frac{1}{3}$  per cent of the total receipts in the previous year. The benefit of this scheme will be restricted to professionals whose total receipts do not exceed INR1 crore during the financial year.

### **1.6 Section 50C of the Act**

The present provisions of Section 50C of the Act do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such an agreement. A similar provision introduced under Section 43CA of the Act does take care of such a situation. It is therefore proposed to amend Section 50C of the Act that where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the value referred to in Section 50C(1) of the Act may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such a transfer as on the date of the agreement. The said provision shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before a date of agreement for transfer of the asset.

### **1.7 Deletion of Section 56(2)(vii)(b)(ii) – Inadequate consideration**

Section 56(2)(vii)(b)(ii) provides that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding INR50,000, the stamp duty value of such property as exceeds

such a consideration, shall be chargeable to tax in the hands of the individual or HUF as income from other sources.

This provision works on the assumption that the buyer of the property would have paid a consideration more than the stated consideration. This presumption is not in accordance with judicial interpretation and therefore, it is proposed that Section 56(2)(vii)(b)(ii) of the Act should be deleted.

### **1.8 Proposed deletion of Section 143(1d) – avoiding undesirable delay in issue of refunds**

It is desirable that any refund due to a taxpayer, under the income tax return filed by him, is processed and the refund issued to him within a stipulated time frame, maximum six months from the end of the month in which the tax return is filed.

Section 143(1D) of the Act provides that the processing of a return shall not be necessary, where a notice has been issued to the taxpayer under Section 143(2) of the Act and has proved to be a bottle-neck in the commitment of the tax department to issue timely tax refunds. The time limit for finalisation of assessment, in a case where notice for scrutiny has been issued under Section 143(2) or in the case of International Transfer Pricing, could extend upto 32 months or even 40 months, respectively, from the date of filing of the tax return.

Accordingly, it is recommended that Section 143(1D) of the Act should be deleted with effect from 1 July 2016.

### **1.9 Making of a fresh claim during the assessment proceedings**

It has been observed that where the taxpayer makes a claim of any expenditure or a deduction during the assessment proceedings which had not been made in the return of income filed under Section 139, the AO does not entertain the claim.

The judicial interpretation in Goetze (India) Ltd. vs. CIT [2006] 284 ITR 323 (SC) is that a fresh claim may be entertained by the appellate authorities but cannot be entertained by the AO except by way of a revised return.

Taking a pragmatic and non-technical view, what is required to be determined is the taxable income of the taxpayer in accordance with the law. This interpretation has resulted in some practical

difficulties and is perceived to go against the practice adopted by the income tax department itself. It is therefore, proposed that the provision may be amended to provide an opportunity to the taxpayer to make a fresh claim during the assessment proceedings. However, such a claim should also be verified and any wrong claim made by the assessee should also be subject to penal provisions. The taxpayer should make a claim in a prescribed form and verify that such a claim shall be deemed to have been made in the return of income filed by him. Any wrong claim made by the taxpayer should also be subject to penal provisions.

### **1.10 Deferment of ICDS - Section 145(2)**

The Central Government notified the Income Computation and Disclosure Standards (ICDS) which came into effect from 1 April 2015 (AY 2016-17).

In view of the Committee, the taxpayers are already grappling with regulatory changes of the Companies Act, 2013, Ind- AS and the proposed GST. The provisions of the ICDS are capable of generating a legal debate. Further, ICDS deals only with the method of accounting and at best it brings timing difference on recognition of expenditure or income as compared to the books of account. Consequently, a fuller study of the implications of ICDS is necessary before it is implemented.

Accordingly, the Committee recommends that the implementation of the ICDS be deferred by making a suitable amendment under Section 145(2) of the Act.

### **1.11 Re-opening of assessment on account of audit objections**

One of the key sources of dispute is the existing arrangement for follow-up on audit objections by Internal Audit Party and the Revenue Audit Party. In terms of the arrangement, the AO is required to take corrective steps following audit objections. The problem arises when the AO seeks to take corrective measures by invoking the provisions of Section 147 or 263 of the Act. Since the audit objections are based on material on record and there is no occasion for any new material to be brought on record in the course of audit, any re-opening of assessment or review by the Principal Commissioner constitutes a 'change of opinion' in the eyes of law. This being so, the corrective measure under Section 147 or Section 263 of the Act is held to be invalid by Courts.

In spite of several court judgements to this effect, the CBDT has issued a circular to the effect that in all cases of audit objections, the AO should initiate corrective steps irrespective of whether the objection is valid or not in the eyes of law.

The Committee recommends that to the extent that the audit objections are mistakes apparent from record, it should be mandatory for the AO to take corrective steps. However, where the correction of audit objections require reopening or revision of completed assessments, the same should not be permitted since it amounts to a change of opinion and creates uncertainty for the taxpayer. Such audit objections may be used as material for knowledge dissemination and system improvement.

### **1.12 Proposal to raise the threshold limits and rationalise the rates for TDS**

A number of annual threshold limits in respect of Tax Deducted at Source (TDS) have just not been revised over the years and therefore, the Committee has recommended suitable hikes in such threshold limits.

The Committee felt the need for rationalisation of TDS rates, on account of the lowering down of the average tax rates in case of majority of the taxpayers in the individual and HUF categories. The TDS rates in case of interest and commission in these two categories needs to be reduced from the existing 10 per cent to 5 per cent.

With a view to facilitate the ease of business for small partnership firms (other than limited liability partnerships), the Committee recommends that they should be exempted from the responsibility of TDS, unless their total sales, gross receipts or turnover from the business or profession carried on by them exceeds the monetary limits specified under Section 44AB.

Further, for those who are also not equipped to discharge the complex formalities of tax deduction, the Committee recommends that they may also be included within the scope of this exemption.

With a view to simplify the provisions in regard to interest, commission and lottery winnings etc., it has been proposed to consolidate the relevant provisions in this regard and consequentially delete certain related sections, including certain other sections, which are now obsolete and not in force.

The recommendations in relation to the TDS limit and rate, are summarised in the Annexure 1.

### **1.13 Proposal to resolve practical difficulties in relation to lower deduction under Section 197 of the Act**

Section 197 of the Act, read with Rules 28, 28AA and 28AB of the Rules, prescribe guidelines and procedure for issue of a certificate for TDS at a lower rate in the case of a person, when the AO is satisfied that the total income of such person liable to TDS, justifies the deduction of income tax at any lower rate or no deduction of income tax.

Certain practical difficulties are faced by persons who are granted such certificates and therefore, the Committee recommends suitable amendments in Rules 28AA and 28AB, inter alia, explained hereunder:

- Acceptance of an application for issue of a Certificate for TDS at a lower rate, three months prior to the commencement of the financial year and prescribing a suitable time limit for issue of the same
- Need to treat the Certificate for TDS at lower rate as valid, in respect of all units of the tax deductor
- Start accepting applications from all eligible taxpayers electronically
- The existing certificate issued by the department for the immediately preceding previous year shall continue to be valid till the issue of a fresh certificate if the taxpayer has filed the application for issue of a fresh certificate.

### **1.14 Rule 37BA - Credit for tax deducted at source and the recommendations to obviate the hardships arising therefrom**

Section 199 of the Act read with Rule 37BA of the Rules deal with the provisions with respect to granting credit for tax deducted at source. However, there are a number of situations, where in actual practice, it becomes extremely difficult or at times, even virtually impossible for the person entitled to claim credit for tax so deducted.

Three such situations which have been represented to the Committee are as follows:

In certain instances, inspite of the declaration filed by the deductee, the deductor does not report the tax deduction thereby denying the credit for the tax deducted at source in the hands of the person in whose hands the relevant income is assessable and is entitled to claim credit.

In case of Section 206AA of the Act, in spite of obtaining and furnishing of the correct PAN by the deductee at a later stage, the deductor is not inclined to correct the statement of tax deducted at source, and as a result no one is entitled to claim credit for such TDS and the amount lies in the Government treasury.

The provisions of the Act enable the deductor to file a correction statement for rectification of any mistake in respect of the information so submitted in the prescribed statement. However, in many cases because of negligence on part of the deductor resulting in a mistake, on account of which the deductee is unable to seek correct credit or where even after the deductee has requested the deductor to correct the same, he does not do so.

The Committee recommends that in all such cases, the concerned deductee should be allowed to report the correct information in this regard to a designated authority, in a prescribed form that may be devised by the CBDT which can be submitted before the due date of filing of the return of income, as applicable in his case under Section 139(1) of the Act. On the basis of such reporting by the deductee, a suitable mechanism for granting credit for tax deducted in all such cases should be worked out by the CBDT. The relevant amendments are proposed to be made to Rule 37BA of the Rules.

### **1.15 Rule 30 and 31 – Time and mode of payment and filing of statement of TDS under the provisions of the Act**

The Committee recommends the following in terms of the time limits prescribed under the Rules:

The persons required to deduct tax and file a challan cum statement in Form 26QB are required to do so within a tight time frame of seven days from the end of the month in which the deduction is made. Since such persons are not familiar with TDS procedures, with a view to grant them sufficient time for compliance, it is proposed that they may be allowed a time of 30<sup>1</sup> days to comply with the

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<sup>1</sup> Though the Committee has proposed to recommend the extension to 30 days; however, the amendment to the Rules as proposed in this report itself mention the time frame of 90 days for completion of the necessary formalities.

necessary formalities, instead of the prevailing time limit of only seven days from the end of the month in which the tax deduction is made.

In case where the income or amount is credited or paid in the month of March, instead of the current time limit of 30 days until 30 April, for better compliance, it is proposed that an enhanced time limit of 45 days, until 15 May be allowed for payment of tax deducted.

As per the current provisions, where the deductor is the Government, the time granted for filing Statements of tax deducted is one month from the end of the quarter; however, non-Government deductors are granted only 15 days' time for this purpose. The Committee recommends that even non-Government deductors need to be given a similar time of one month, for purposes of better compliance. Moreover, at the end of the year, the prescribed time of one month needs to be increased to one and a half month for all deductors.

### ***1.16 Exempt non-residents having a Tax Identification Number from the applicability of TDS at a higher rate under Section 206AA of the Act***

Under the current provisions of Section 206AA of the Act, tax is required to be deducted by the deductor at a higher rate as prescribed under the said section, where the deductee does not furnish his PAN.

As regards non-residents, the Committee noted that in view of specific provisions of Section 115A of the Act and the provisions under the respective Double Taxation Avoidance Agreements (DTAAs) prescribing specific rates for tax deduction at source under Section 195 of the Act, there was no justification for providing deduction of tax at a higher rate than as prescribed under Section 115A or under the respective DTAA.

The Committee was of the view that it should suffice if the concerned non-resident furnished to the deductor, in lieu of such PAN, his Tax Identification Number (TIN) in the country or the specified territory of residence; and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which such a person claims to be a resident. Accordingly, the Committee recommends amendment to Section 206AA of the Act. Further, it is also recommended that Section 206AA of the Act should not apply to payment of interest, on

on long-term bonds, as referred to in Section 194LC, to a non-resident, not being a company or a foreign company.

### ***1.17 Recovery of disputed demands***

Under the existing regime for recovery of demand, AOs insist upon collecting disputed demands even when they are in appeal. In practice, this is leading to serious hardship to the taxpayer particularly in cases where there is a high-pitched assessment. Experience has shown that generally an application under Section 220(6) for not treating the taxpayer as being in default is routinely rejected.

The Committee recommends that the taxpayer should be allowed an automatic stay of demand on payment of 7½ per cent of the demand. The stay will remain in operation till the first appellate order is passed. The Committee recognises that in cases of a high-pitched assessment, since the payment of 7½ per cent of the demand could be extremely onerous for the taxpayer, it is recommended that in such cases, the taxpayer should be given the liberty to approach the Commissioner (Appeals) and request for a stay without the mandatory payment of 7½ per cent of the demand.

The Committee also recommends that recovery of the demand arising from the levy of penalty after the order of the Commissioner (Appeals) should be stayed till one month after the disposal of the quantum appeal by the Tribunal. Accordingly, the Committee recommends an appropriate amendment to Section 220 of the Act.

### ***1.18 Amend Section 234C of the Act to provide a relief from interest for the deferment of advance tax in case where a new business is started during the FY***

Section 234C of the Act requires to be suitably amended with a view to provide that liability for interest under the said section shall not apply to any case, where a taxpayer declares income from business for the first time after the first or second installment of advance tax is due and where the taxpayer has discharged his liability for payment of advance tax in the installments to follow. An amendment would be suitably made to Section 234C of the Act. The Committee also recommends that an appropriate column or space be provided in the return of income where the taxpayer can disclose the information necessary for taking the benefit of the proviso.

### **1.19 Reduction of the fee under Section 234E of the Act for default in furnishing statements of TDS and TCS**

The levy of a mandatory fee under Section 234E of the Act at the rate of INR200 per day for default in furnishing of Statements of TDS under Section 200(3) and TCS under Section 206C(3) of the Act has been a matter of debate ever since it came to be introduced with effect from 1 July 2012. While in principle, the courts have justified the levy as being constitutional, it is widely believed that this levy is harsh keeping in view the fact that the person committing any default for delayed deduction or payment of tax is already inflicted with penal interest of 12 per cent or 18 per cent per annum.

In fact, prior to the introduction of this mandatory levy, the penalty for similar defaults as provided under was imposable at INR100 per day. In cases of any default by a Government Office, while there is no provision for levy of fee under Section 234E of the Act, the penalty for similar defaults under Section 272A(2)(m) of the Act is prescribed at INR100 per day. In view of the above, there is a case for reduction of the fee under Section 234E of the Act from INR200 per day to INR100 per day. Accordingly, the Committee recommends to amend Section 234E of the Act to that effect.

### **1.20 Grant of timely refund with interest and also payment of higher interest in case of delayed refund**

The Committee recommends that interest on refunds should be payable at the rate of -  
(a) one per cent per month, or part thereof, if the return is processed under Section 143(1) of the Act any time after six months from the end of the month in which the return is filed or the refund is issued any time after the end of the said six month period;

(b) 1½ per cent per month, or part thereof, if the return is processed under Section 143(1) of the Act any time after 12 months from the end of the month in which the return is filed or the refund is issued any time after the end of the said 12 month period;

It is also recommended that the AO shall, without the taxpayer being required to make any claim in that behalf, refund the amount due to the taxpayer with interest due thereon under the provisions of Section 244A of the Act within three months from the end of the month in which orders passed in an appeal or other proceedings under the Act are passed.

It is also recommended to provide that if such a refund due to the taxpayer is not granted to him within three months from the end of the month in which such an order is passed, the taxpayer shall be entitled to receive additional interest on such a delayed refund at 1½ per cent per annum, over and above the normal interest of ½ per cent per annum due to him under Section 244A(1) of the Act.

There is no provision to grant interest on refund, where the same arises out of any self-assessment tax or interest paid by a taxpayer under any provision of the Act. It is unfair and inequitable that a taxpayer should be deprived of interest on such refund of tax or interest, more particularly when the money representing such a refund has been used by the Government until the same is refunded. The Committee, accordingly, recommends to make an amendment to Section 244A of the Act.

### **1.21 Rationalisation of provisions in regard to set off of refunds due to the taxpayer against tax demand**

The Committee recommends that Section 245 of the Act is proposed to be amended so as to provide that no set off of refund under this section shall be made by any income tax authority without giving an intimation in writing to the taxpayer of the action proposed to be taken and without dealing with the objections if any, filed by taxpayer in response to such an intimation served on him. Moreover, several decisions have held that such a demand cannot be adjusted against any refund due to the taxpayer. Courts have explained that the taxpayer in such a case would have been entitled to stay on recovery of such a demand and merely because the tax department is in possession of the taxpayer's funds due to him as his legitimate refund, the same cannot be adjusted against such a demand.

### **1.22 Shorter duration for rectification of mistake by the Tribunal**

The existing provisions of Section 254(2) of the Act provide a time-limit of four years from the date of the order of the Income-tax Appellate Tribunal (the Tribunal) for rectification of mistakes apparent from the record. In practice, this long time-limit has given rise to difficulties arising on account of non availability of the members who passed the order due to transfer, retirement or otherwise.

The Committee recommends that the time-limit for rectification of the order of the Tribunal under Section 254(2) of the Act should be reduced to 120 days from the date of the order sought to be rectified.

### ***1.23 Widen the scope of disposal of appeals by the single member benches of the Tribunal***

The existing provisions of Section 255(3) of the Act provide that a single member bench of the Tribunal can dispose of the appeals in cases where the assessed income of the taxpayer does not exceed INR1.5 million. The Committee feels that the appeal limit is small and due to which, cases where the total income assessed is more than the above figure, cannot be heard by single member benches.

The Committee recommends that in the interest of speedy disposal of appeals the limit can be enhanced to INR10 million where the tax effect involved would be around INR3 million. This will also help the disposal of appeals in places where there is only one bench functioning.

### ***1.24 Specify a one year time limit for disposal of petitions for waiver of penalty and interest under Section 273A, 273AA and 220(2A) of the Act***

Section 264 of the Act prescribes a time limit of one year for disposal of a taxpayer's revision petition. However, there is no such time limit for disposal of petitions for waiver of penalty under Section 273A and 273AA of the Act and waiver of interest under Section 220, 234A/B/C of the Act. Therefore, petitions of taxpayers on these points remain unattended to for long.

The Committee recommends that a similar time limit of one year from the end of the financial year in which the petition is filed should be prescribed in Section 273A, 273AA and 220(2A) of the Act. It is proposed that Sections 273A, 273AA and 220(2A) of the Act may be suitably amended and that the CBDT may issue suitable directions under Section 119(2)(a) of the Act providing for such a time limit for disposal of petitions for waiver of interest under Sections 234A, 234B and 234C of the Act

### ***1.25 Amendment to Section 273B of the Act for non-levy of penalty***

The committee recommends that the scope of Section 273B of the Act should be enlarged to provide that penalty for concealment of income or furnishing inaccurate particulars thereof will not be imposed where any addition or disallowance

is made without any evidence or in a routine manner or on estimate and in cases where the AO takes a view which is different from the bona fide view adopted by the taxpayer on any issue involving the interpretation of any provision of the Act or any other law in force and which is supported by any judicial ruling. These recommendations will cut wasteful litigation and also infuse a sense of responsibility and accountability both upon the taxpayer and the Revenue.

### ***1.26 Release of attached property on submission of a bank guarantee***

Under Section 281B of the Act, the AO has the power to provisionally attach the assets, with the approval of the CIT/CCIT. Such an attachment is supposed to be temporary, with a limit of six months, extendable to a maximum of 24 months. However, in many cases, the taxpayer challenges the validity of the proceedings itself by a writ, wherein the proceedings for an assessment may be stayed, or opts for an AAR ruling and obtains a stay on the assessment till the AAR decision, which can further prolong the duration of the attachment under this section. As the attachment of its property can obstruct its business reorganisation plans, it can become the primary source of its grievance with the Indian tax authorities.

The Committee recommends that such grievances and hardships on part of the taxpayers can be avoided by providing a statutory option to the taxpayer to submit a bank guarantee for the value of the assets attached under Section 281B of the Act or a lower amount covering the tax demand anticipated by the AO, and seek relief from attachment of its assets. The Committee also recommends that prohibiting recovery from such a bank guarantee till the time for filing an appeal against the assessment order has expired would be a necessary assurance for the taxpayer for exercising this option, and facilitate resolution of disputes related to attachment of property under Section 281B of the Act without impacting the taxpayer's business plans. There could be a need to clarify the conditions or format of the bank guarantee, including the banks from which such a guarantee would be acceptable and the time for which such a bank guarantee needs to be furnished. Taking into account that the bank guarantee would be only for a limited period and that the appellate proceedings may not be disposed during that period, the option of encashing a bank guarantee that is due to expire shortly, say 15 days, would need to be provided to the AO. This would also shift the onus on the taxpayer to extend the validity of the bank guarantee before the trigger of recovery sets in.

The Committee also recommends display of the attachment in the portals of the website of the Department of Revenue, Government of India or in such other website as may be notified by the Government of India. This is with the view to providing information to those who are dealing with the particular taxpayer in whose case the attachment is made. The Committee has taken note that even as per the existing regulations, such information as is relevant to the credit rating of any individual or other entity is required to be put up in certain websites. Rules may also be required for vesting the power of valuation of an asset to a Valuation Officer or an authorised valuer, and providing other details of the manner in which the value of the property attached should be determined.

## **2. Recommendations for reforms through administrative instructions**

### ***2.1 Implementation of Ind-AS and its impact on taxable income***

Ind- AS is being implemented with effect from 1 April 2015 based on fair value, permitting recognition of unrealised income and anticipated unrealised losses and various other implications on book profit, turnover as well as income levels. These provisions may substantially change assets, liabilities, turnover, provisions, income recognition, notional gains and notional losses impacting book profit as well as income figures.

Therefore, it is proposed that till such a time that the tax department as well as taxpayers are able to understand the real impact on taxable income and book profit, the present status quo needs to be maintained. Implementation without deeper study of the impact may give rise to avoidable litigation.

### ***2.2 Tax deduction at source simplification***

The Committee made the following suggestions with respect to TDS:

- Any errors made while depositing the TDS should be allowed to be rectified by deductor.
- Tax deductor to inform the deductee about deduction by SMS or email.
- In the case of a merger or demerger or restructuring, the TDS is to be transferred to the resulting company in terms of the scheme approved by the High Court. Form 26AS, OLTAS, ITD data to amend on electronic amendment application by a centralised software system.
- TDS return filing and rectification software to be directly accessed by the taxpayer, similar to income tax return.
- Any extra TDS paid by mistake should be permitted to be requested electronically for refund. Request should be processed electronically in a time bound manner.
- Rectification of TDS returns to be permitted without any restriction, to facilitate the deductee to get credit.
- No prosecution should be made where tax is being deposited late alongwith interest and where the same has been paid voluntarily within 12 months from the date of deduction.
- The deductor should include full details of the deductee, including the name and address as well as details of payment in the TDS return in respect of any deductee who has not submitted PAN details and consequently where tax was deducted at 20 per cent.
- Where the deductor is not able to rectify the TDS return, the deductee should be permitted to obtain PAN at any time and take credit for TDS, if he files his income-tax return and an electronic application is made for rectification of TDS.
- While data is being punched in the TDS return, software should be competent to have an electronic pop-up of name of the deductee as soon as any PAN number is punched in the TDS return.
- Electronic request with proof of payment of tax or 26AS credit to be processed within 15 days. Solutions/queries can be emailed and processed with no human interface. In case there is no response, the help desk shall render assistance in this regard.
- Where there are small tax demands which are outstanding for more than five years and the department is not able to trace the proper records, the government may consider writing off the demand.

- In case where the income or amount is credited or paid in the month of March, instead of the current time limit of 30 days until 30 April, it has been proposed that an enhanced time limit of 45 days, until 15 May be allowed for payment of tax deducted, for better compliance. If the tax, along with interest is paid by 30 June of the relevant assessment year, no penalty proceedings should be initiated.
- In all cases of non-payment of TDS to the government for a period of 12 months from deduction, prosecution should be initiated to protect the deductee's interest, unless the full TDS amount along with interest is paid by the deductor before the initiation of prosecution. Penalty proceedings are in any case required to be initiated in such cases.

### **2.3 Transparency in tax administration**

The Committee recommends that the government should aim to complete most of the taxation processes electronically so as to eliminate human interface. The Committee also agreed in principle that all communications to and from the tax department should be undertaken electronically. There should be a system for monitoring online submission of replies to queries and it should be under the guidance of senior officers.

The Committee also recommends that electronic technology is needed to be put in place for:

- Selection of cases for scrutiny
- Issue of notices for scrutiny assessments
- Preparation of a questionnaire for scrutiny assessments
- Submission of replies by the taxpayers
- Seeking of additional information/clarification by the AO
- Response on additional information and supporting details
- Issue of a show cause notice in respect of proposed additions/disallowances by the AO
- Final submission and issue of assessment orders

### **2.4 System issues**

The IT software needs to be strengthened to ensure that the following issues are resolved:

- TDS reflected in 26AS not reflected in OLTAS
- TDS reflected in 26AS and OLTAS are not reflected in the Income Tax Department (ITD) System
- Even self-assessment tax and advance tax challans, are at times, not reflected in ITD and OLTAS for many years.

### **2.5 Issue of PAN to non-residents**

Currently, the Government of India is accepting self-attested documents for several purposes and does not insist on getting the same attested by the prescribed authorities. However, non-residents are facing practical difficulties on account of the current requirement of getting the documents attested by consular authorities. In many cases, the Indian Embassies may be located far away from their place of residence.

To remove this difficulty, the Committee recommended that documents for issuance of PAN may be allowed to be self-attested or notarised.

### **2.6 Adjustment of refunds**

Various Courts have held that where any demand outstanding against the taxpayer relates to a point, which stands squarely covered by a decision in favour of the taxpayer, such a demand cannot be adjusted against any refund due to the taxpayer. Courts have logically explained in this regard that the taxpayer in such a case would have been undisputedly entitled to stay on recovery of such a demand and merely because the department is in possession of the taxpayer's funds due to him as his legitimate refund, the same cannot be adjusted against such a demand.

The Revenue cannot defend such erroneous adjustments merely on the ground that the system does not provide for any such mechanism. A suitable system shall be required to be put in place to provide a remedy keeping in mind that the taxpayer's money is being adjusted without the authority of law.

## **2.7 Amendment of the return form to make additional disclosure**

The existing return forms do not have any column enabling the taxpayer to disclose his view point regarding certain claims for deductions, exemptions, etc. Non-disclosure of bona fide views may result in imposition of a penalty.

The Committee recommended that the return forms be suitably amended to provide adequate space in the return form to enable the taxpayer to submit his view point and justification of his claim. This will also be necessary to meet the requirement of declaration of the bona fide view of the taxpayer in order to avoid penalty as recommended by the Committee in the proposed Section 273B(2) of the Act.

### **Our comments**

The recommendations issued by the Easwar Committee are a welcome step by the Government to simplify the provisions of the Act. The Committee has recommended to simplify/delete various provisions of the Act for e.g. provisions related to the definition of capital assets, disallowance of expenditure related to exempt income, taxation in the hands of the purchaser of the property on account of a difference between the sale price and stamp duty, ICDS, TDS, etc. If these recommendations are implemented, they are expected to help reduce litigation on account of interpretative differences and further the cause of ease of doing the business in India. It may bring certainty and predictability in tax laws for taxpayers, including foreign taxpayers.

The Committee has stated that the more complex issues which require a more exhaustive and deeper review will be dealt with in the next batch of recommendations. The Committee has invited public comments on their recommendations based on which the final recommendations would be issued. It would be interesting to see how the government would introduce these recommendations, either by way of suitable amendments in the Act in the forthcoming Budget or by issuing instructions/Circular through the CBDT.

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**Annexure 1**

REVISED SCHEDULE OF TDS FOR RESIDENT DEDUCTEES							
Present section	Nature of payment		Present threshold limit (INR)	Proposed threshold limit (INR)	Present rate of TDS (%)	Proposed rate of TDS (%)	Remarks
	Current head	Proposed head					
192	Salary	Salary	Basic exemption limit	Basic exemption limit	At the average rate of tax	At the average rate of tax	
193	Interest on securities	Interest income	2,500	15,000	10%	5%	* To be clubbed together under the head 'Interest income'
194A	Interest other than interest on securities	Interest income	Banks-10,000 Others-5,000	15,000	10%	Where deductee incl./HUF-5% For others - 10%	* Exclusions to be separately notified
194B	Winnings from Lottery/Cross Word Puzzle	Income from Winnings	10,000	15,000	At Rates in Force	30%	To be clubbed together under the head 'Income from winnings'
194BB	Winnings from Horse Race	Income from Winnings	5,000	15,000	At Rates in Force	30%	
194C	Payments to Contractors	Contract Payments	Single transaction-30,000 Annual limit-75,000	1,00,000 (annual limit)	Where Deductee Incl./HUF-1% For others 2%	Where Deductee Incl./HUF-1% For others 2%	* No separate transaction limit * Exclusions to be separately notified
194D	Insurance Commission	Commission Income	20,000	15,000	At Rates in Force	5%	* To be clubbed together under the head 'Commission income'. * Commission income to also include brokerage

194G	Commission on Sale of Lottery Tickets	Commission Income	1,000	15,000	10%	5%	
194H	Commission or Brokerage	Commission Income	5,000	15,000	10%	5%	
194DA	Payment in respect of Life Insurance Policy	Payment in respect of Life Insurance Policy	1,00,000	1,00,000	1%	1%	
194E	Payments to Non-resident Sportsmen or Sports Associations	NA	Nil	Nil	20%	20%	To be classified separately under the Head - 'Payments to non-residents'
194EE	Payments in respect of NSS Deposits	Payments in respect of NSS Deposits	2,500	15,000	20%	5%	No TDS where payment is made to legal heirs
194F	Payments on repurchase of Units of MF or UTI	To be deleted since now not relevant	Nil	NA	20%	NA	
194I	Rent	Rent Income	1,80,000	2,40,000	* 2% for Plant, Machinery or Equipment * 10% for Land or Building	* 2% for Plant, Machinery or Equipment * 10% for Land or Building	

194IA	Payment on Transfer of Immovable Property	Payment on Transfer of Immovable Property	50,00,000	50,00,000	1% at the time of each payment during the year	1% of aggregate payment, to be deducted at the time of last payment during the year to each deductee	*Specified Agricultural Land to be exempted *234E relief
194J	Fees for Professional or Technical Services	Fees for Professional or Technical Services	30,000	50,000	10%	10%	Professional or Technical Services to include Non-Executive Director's Commission, Royalty and Non-compete Fees
194K	Income in respect of Units	To be deleted since now not relevant	2,500	NA	10%	NA	
194L	Payment of Compensation on acquisition of Capital Asset	To be deleted since now not relevant	1,00,000	NA	10%	NA	
194LA	Payment of Compensation on acquisition of certain Immovable Property	Compensation for compulsory acquisition	2,00,000	5,00,000	10%	10%	
194LB	Income by way of Interest from Infrastructure Debt Fund	NA	Nil	Nil	5%	5%	To be classified separately under the Head- 'Payments to Non-Residents'

194LBA	Income from Units of a Business Trust	Income from Units of a Business Trust	Nil	Nil	* Where deductee is Resident 10% * For Non-Residents 5% or at Rates in Force	5%	Payments to Non-Residents to be classified separately under the Head- 'Payments to Non-Residents'
194LBB	Income in respect of Units of Investment Fund	Income in respect of Units of Investment Fund	Nil	Nil	10%	10%	
194LC	Income by way of Interest from an Indian Company	Specified Interest Payments to Non-residents	Nil	Nil	5%	5%	To be classified separately under the Head- 'Payments to Non-Residents'
194LD	Income by way of Interest on certain Bonds and Government Securities	Specified Interest Payments to Foreign Investors	Nil	Nil	5%	5%	To be classified separately under the Head- 'Payments to Non-Residents'

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