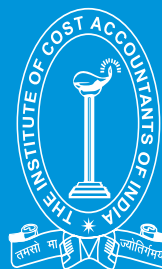


PRE BUDGET MEMORANDUM 2018 - 19



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

www.icmai.in



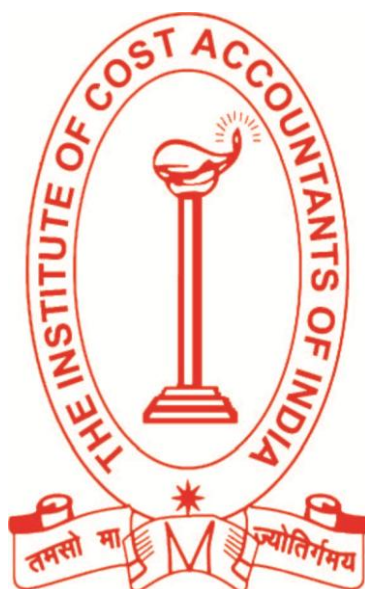
MISSION STATEMENT

“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting”

VISION STATEMENT

“The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.”

Pre Budget Memorandum 2018 - 2019





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About The Institute

The Institute of Cost Accountants of India (ICAI) is a premier professional body of Management Accountants in the country established on 28th May, 1959 under the Cost and Works Accountants Act, 1959 enacted by the Parliament to regulate the profession of Cost and Management Accountancy in India. It is Statutorily Recognized by the Act of Parliament in 1959 - as The Cost & Works Accountants of India (ICWAI). The ICWAI is recognized by the Parliament as The Institute of Cost Accountants of India (ICAI), w.e.f. 1st Feb, 2012.

The Institute is governed by a Council in accordance with provisions of the Cost and Works Accountants Act, 1959 as may be amended from time to time and Rules and Regulations framed there under.

The Institute as a part of its obligation to regulate the profession of Cost and Management Accountancy, enrolls students for Cost Accountancy course, provides coaching facilities to the students, organizes professional development programmes for the member and undertakes research programme in the field of Cost and Management Accountancy.

Over the year the Cost and Management Accountancy profession has registered a tremendous growth and has occupied a prominent role in our economy and society. The Institute has more than 5,00,000 students and more than 70,000 qualified members. The curriculum of the Institute is designed to impart professional knowledge of Cost and Management Accountancy, taxation and related subject to make the qualified CMA industry ready . The expertise of the students qualifying in the Institutes Examinations are suited to render effective services to Industries, Financial bodies, etc.

The Institute is a member of the International Federation of Accountants (IFAC), The Confederation of Asian and Pacific Accountants (CAPA), The South Asian Federation of Accountants (SAFA), National Foundation for Corporate Governance (NFCG), Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII) and The Associated Chambers of Commerce and Industry of India (ASSOCHAM). The Institute, as a leader in the field of accountancy in the South Asian Region, is also imparting training to accountants from overseas countries.

The consistent and determined efforts of the Institute to promote the growth of Cost and Management Accountancy Profession and valuable services rendered to the Industrial and commercial organization fuelled the urge that the profession should play its due role in the economic development of the nation.



Our Contribution

COST AND MANAGEMENT ACCOUNTANCY PROFESSION IN INDIA

With the globalization of all economic activities, the industries both in manufacturing and service sector have recognized the potential of Cost and Management Accounting profession in giving support in effective resource management and making the operations more cost effective for facing the challenges of management.

Cost and Management Accountants provide services in investment planning, profit planning, project management and overall managerial decision making process. Many members of the Institute are holding top management positions, viz., Chairman, CEO/CFO, Managing Director, Finance Director, Financial Controller, Chief Accountant, Cost Controller, Marketing Manager, Chief Internal Auditor etc.

Central Government has constituted an all India cadre known as Indian Cost Accounting Service (ICAS) at par with class-I services for framing fiscal and tax policies.

The Specialized knowledge and skill of the professional members of the Institute are being given due recognition for different Audit or Certification work under different statutes like maintenance of Cost Accounting Records and Cost Audit under section 148 of The Companies Act 2013 and Valuation Audit, Cenvat Audit/Service Tax Audit under section 14A, and 14AA of the Central Excise Act, 1944, and Audit under VAT of Different states. CMAs are also recognized as auditor in GST rules.

GST is one of India's most significant economic reforms which is expected to erase barriers between states to create a common market that will lower costs and increase efficiencies and potentially boosting growth. The Institute pledges its all out support to the Government in smooth *implementation of GST across the country. The Institute is geared up for dissemination of knowledge on GST to its members and all stakeholders at large.*



Objectives of our Tax Research Committee

- Monitoring of Current tax legislation and analyzing changes of the existing legislation.
- Sharing of knowledge and experiences, proposing and recommending collective suggestions to the Ministries and Bodies for consideration to amend the legislation.
- To examine various laws, rules, regulations, circulars etc which are enacted or issued by the Government from time to time.
- To prepare and submit representations to the Governmental authorities and to send suitable Pre-Budget and Post-Budget Memoranda containing suggestions for improvements in the respective legislation.
- To respond to issues on Tax laws and practice referred by the Governmental authorities/Statutory Authorities/ Regulatory Bodies and stake holders.
- To assist, advise, update and guide to amend or modify Tax laws in the country for transparency, simplification and inclusion.
- To disseminate the knowledge through webinars and seminars, workshops to the members and students of the Institute.
- To conduct Seminars, workshops in different locations of the country to make aware the members and general public on various changes in the tax laws and capacity building
- To bring out new Publications and revise the existing publications relating to Direct and Indirect Tax laws.
- To organize courses on Tax Laws and practice.
- To update members in the field of taxation *through fortnightly issue of E-Bulletin.*
- To carry out various researches and publish the same.



Suggestions

Direct Taxes

Amendment to the Definition Section

1. The definition of Capital Assets U/s 2(14) need to be enlarged for including Assets in the nature of shares held on private placement.

Object: To cover all transactions of securities through private placement this is now covered by the Companies Amendment bill 2017.

2. **Definition of “ Fair Market value”**

The existing definition of 2(22B) of the Act needs to be amended to include the concept of “Open Market Value” to the definition of “Fair Market Value”. The definition of Open market Value has given by CBEC in GST Valuation Rules is as Follows:

“Open Market Value means the full value of money excluding taxes under GST laws, payable by a person to obtain such supply at the time when supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.”

3. **Tenure of holding period of Asset towards computation of Capital Gain U/S 2 (42A)**

The tenure of holding form 24 months as applicable effective from 2017 Finance bill need to be amended to consider 12 months in all the cases as stated below:

[Provided that in the case of 48[a security (other than a unit) listed in a recognized stock exchange in India] 49 [or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or 50 [a unit of an equity oriented fund]] 51[or a zero coupon bond], the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted:]

[Provided further that in case of a share of a company (not being a share listed in a recognised stock exchange) or a unit of a Mutual Fund specified under clause (23D) of section 10, which is transferred during the period beginning on the 1st day of April, 2014 and ending on the 10th day of July, 2014, the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted:]

[Provided also that in the case of a share of a company (not being a share listed in a recognised stock exchange in India), 53a [or an immovable property, being land or building or both,] the provisions of this clause shall have effect as if for the words "thirty-six months", the words " twelve months " had been substituted.]

The Sub Sec. (hf) and (hg) need also to be amended to consider:

in the case of a capital asset, being equity shares in a company, which becomes the property of the assessee in consideration of a transfer arising out of any arrangement of debt restructuring by RBI or any Govt. Authority, the same shall be included the period for which the preference shares were held by the assessee;

in the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer arising out of any arrangement of debt restructuring by RBI or any Govt. Authority, the same in clause (xix) of section 47, there shall be included the period for which the unit or units in the consolidating plan of a mutual fund scheme were held by the assessee;]

4. Amendment to Sec. 9 – Income deemed to be accrued or arising in India

After expiation – 2, the ambit of business connection the following should be inserted-

Business Connection shall include any business activity carried out through a person acting on behalf of a Non – Resident in respect of Business originating from India and / or destination in India and also habitually secures, fulfil or otherwise liable to complete any contractual obligation in respect of transaction either with resident entity or Non-Resident who is controlled or controlling or subject to a common control in the business activity.

Object: to cover all the transactions by the cargo handling agents, foreign shipping liners agents in India and similar any other intermediary acting in India on behalf of such Non-Resident shipping liners / principal in the foreign country.

The term “Connected Person” should be redefined to include meaning of Related /Associated Enterprises by whatever name called, as defined in Companies Act 2013 /2017.

5. Proposal in respect of Exempted Incomes:

- a. Claim relating to LTA – Section 10 (5)-** the existing restriction / anomaly regarding calendar year and financial year of the claim need to be erased and should only be read with reference to Financial Year. ***The limitation of two numbers of journeys out of four year in a block should be amended to read as four numbers out of four year in a block.***

- b. Tax paid by Government or Indian concern on Income of a Foreign Company [Section 10 (6A)]:** Should be amended to impose taxes on the foreign companies deriving income by way of Royalty / Fees for technical services in all the cases.
- c. Gratuity [Section 10 (10)]:** The maximum limit as prescribed should be revised from 10 Lakhs to ₹ 20 Lakhs in view of implementation of 7th Pay Commission and revision of salaries in the industries (₹ 10 Lakhs is effective from 24th May 2010)
- d. Leave Encashment Section 10(10AA):** The existing limit in respect of encasement of Earned leave ***should be enhanced to ₹ 10 Lakhs considering the economic level in the country.*** (Maximum limit of ₹ 3.00 lakhs was effective from the year 2nd April 1998....)
- e. Tax Exemption on Maturity amount of Life Insurance Policy Section 10 (10D):** Any amount of sum received from any ***Annuity Policy issued under an approved scheme of IRDA should be exempted in full.*** This would help the elderly aged community to enjoy better leverage of income.
- f. Taxability of receipt from of NPS Trust on closure of account Section 10 12(A) & 10 12(B):** Any payment from the National Pension System Trust to an employee on closure of his account or on his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed forty per cent of the total amount payable to him at the time of such closure or his opting out of the scheme;
- any payment from the National Pension System Trust to an employee under the pension scheme referred to in section 80CCD, on partial withdrawal made out of his account in accordance with the terms and conditions, specified under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013) and the regulations made there under, to the extent it does not exceed twenty-five per cent of the amount of contributions made by him;
- The restriction of 35 % / 40% should be removed.***
- g. Income received from "Debt Oriented Fund"** – to encourage the Debt Market of the country which plays significant role in canalising capital to the ***Industry need also to be included within the ambit of Se. 10 (38) in line with Equity Oriented Fund.***
- h. Proposal to enhance the threshold limit of Exemption 10(32)** relating to clubbing of income of the minor child with the income of the parent need to be enhanced from ***₹ 1500/- to ₹30,000 per month*** since the limit fixed in was long back and need a revision keeping the inflation in the economy and the level of expenditure. (₹1500/- was fixed effective from 1st April 1993)

- i. **Limit of Children Education Allowance Section 10(14)**: Exemption limit should be increased **from ₹100 per month to ₹2,500 per month per child and Hostel Expenditure Allowance from ₹300 PM per month per child to ₹ 5,000 PM (the amount allowed as deduction remain unchanged since 1997.)**
- j. **Proposal for changes in the Transport Allowance**: The existing exemption limits are applicable effective from **2015-16 at ₹1,600 per months** . Considering steep increase in the level of increase in the travel / travelling cost, it is proposed **to increase to ₹ 2,500 per month.**
- k. **Proposal for enhance the scope of deduction in respect of House Rent Allowance – Section 10(13A) read with rule 2A,**

Under the existing provisions, while computing exemption of House Rent Received by an employees, **50% of salary is taken where the house is situated at the cities like Delhi Mumbai, Kolkata and Chennai, which may be extended to all the other Tier one and Tier Two cities like Ahmedabad, Bangalore, Hyderabad, Bhubaneswar, Guwahati, Pune, Raipur, Chandigarh etc.**

6. **Units setup in SEZ**

The restriction on **the deduction U/s 10 AA of the Act should be removed and 100 % deduction should be allowed to SEZ.**

Object: to encourage the Indian Manufacturing Industry to obtain a better market position across the world.

7. **Special Provisions in respect of certain Industrial undertaking in North Eastern States (10 C)**

To encourage industries and industrial growth in the North Eastern States the following deductions are proposed:

- a. 100 % profit should be allowed as a deduction.
- b. New expenditure in Plant & Machinery applicable to the existing as well as new establishment.

8. **Income of Trust / Institutions U/s 11 & 12**

The existing ambit of the law should include Institution exclusively engaged in “**Skill Development programmes**” of all kind and in the Research Activities. Income of such programme should be exempted in full.

9. **Exemption of Reimbursement limit for medical Expenses: Section 17(2)**

Reimbursement by employer of amount spent by the employee in obtaining medical treatment for himself or any member of his family from any doctor other than hospital

or diseases specified in section 17(2)(ii) is limited to ₹15,000/- per annum. The existing limit of ₹15000/- exemption as above was fixed from 1st April 1999.

Keeping in view the rise in cost of medical expenses and health is the basic need of any tax payer, such reimbursement proposed to increase from ₹15,000 per annum to ₹1,00,000/- per annum.

10. Investment allowance in respect of Plant & Machinery

32AC. (1) Where an assessee, being a company, engaged in the business of manufacture or production of any article or thing, acquires and installs new asset after the 31st day of March, 2013 but before the 1st day of April, 2015 and the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees, then, there shall be allowed a deduction,—

(a) for the assessment year commencing on the 1st day of April, 2014, of a sum equal to fifteen per cent of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2014, if the aggregate amount of actual cost of such new assets exceeds one hundred crore rupees; and

(b) for the assessment year commencing on the 1st day of April, 2015, of a sum equal to fifteen per cent of the actual cost of new assets acquired and installed after the 31st day of March, 2013 but before the 1st day of April, 2015, as reduced by the amount of deduction allowed, if any, under clause (a).

It is proposed that restriction of 15 % of actual cost of new asset should be enhanced to 40 % in all the cases to encourage development in the Manufacturing Sector of the country and Make in India successful.

11. Scientific Research Expenditure – weighted claim U/s 35 (2AA) (2AB)

To encourage scientific research both in house as well as through National Institutions should continue **to be eligible for 200 % deduction without any restrictions.**

12. Expanding scope of Section 43B, by inclusion of “Electricity Charges” for allowing deduction on actual payment / cash basis

After clause (g) the following should be inserted:

‘(h) any sum payable by the assessee towards Electricity Charges

Objective: Growth of Power Sector is an essential element for National Growth and Prosperity. Many of the power distribution companies are not in a position to make payment to the Power generating Companies, due to non-realisation of electricity charges from the industrial / commercial and other consumers. This has the chain effect upto the supplier of services / raw materials. To have adequate cash flow to

such companies, it is proposed to allow the expenses against electricity charges on actual payment / cash basis in computation of income from business / profession.

13. Transfer – Capital Asset Sec. 47 (xa) after clause (xa) and (xb) the following should also be inserted:

Shares – any transfer by way of conversation of debt into Preference Shares or Equity Shares under any debt restructuring scheme of the Govt. / any Authority should not be chargeable to taxes.

14. Valuation of capital asset for deterring Capital Gains

Pursuant to change in the base year for deterring Capital Gains in terms of Long term Capital Assets, all the assets need to be valued at its Open Market Value and not At Cost. Such valuation should be certified by a Member of The Institute of Cost Accountants of India.

15. Investment in specifies Securities for exemption form Capital Gain

Sec. 54 EA & EB should be amended to include all such securities: investment in which shall be exempted to Capital Gains. Central Govt. may notify any such securities from time to time.

16. Exemption from Capital Gains for Investments in residential house

The existing restrictions U/s 54 F of the Act should be removed to allow investment in multiple residential units. This would help the real estate sector to grow further in the country.

17. Reference to Valuation Officer

The Valuation should be carried out by a Member of The Institute of Cost Accountants of India to determine the Fair Market Value of the assets and the same should be then forwarded to the Valuation Officer U/s 55 A.

18. Income from Other Sources

Relaxation on the Restriction on Set off losses from House Property [Section 71(3A)]

Subsection (3A) of Section 71 need to be amended as follows:

The Finance Act, 2017 inserted sub section 3A in section 71 towards restricting set off of house property loss against income from other sources to ₹200,000 per annum only. Balance loss if any will be carried forward to be set off against house property income of subsequent 8 years.

In view of enhanced value of Real Estate and House building loan thereof, the restriction of ₹ 2,00,000 for set off of losses from House property against income from other sources during the same year should be removed.

19. Income from Other Sources [Section 56]

The existing limit of ₹ 50,000/- in aggregate where received without consideration in any previous year from any person as defined in Sec. 56 (1) (Vi) should be enhanced to ₹ 5 Lakhs per annum

20. Over all limit of deduction 80C/ 80CC

The existing limit of **₹1 Lakh 50 Thousand should be enhance to ₹ 3 lakhs per year .**

21. Deduction in respect of contribution to pension fund

The existing limit of deduction to Pension Fund including new Pension Scheme (NPS) **should be enhanced to ₹ 2 Lakhs p.a.** Such contribution should be without any restriction of the limit of salary.

22. Deduction for Medical Treatment, Health Insurance Premium for self and dependent

The limit of eligible contribution for deduction should be made uniform as follows

- a. For any senior Citizen ₹ 3 Lakhs
- b. For any other ₹ 2 lakhs.

Considering the continuous increase in the medical expenses the deduction limit for Medical Treatment U/s 80 DDB should be enhanced to ₹ 3 Lakhs pa. for self and dependent members & at the same time compliance as laid down may also be reviewed.

23. Interest on loan for Higher Education

Considering the increase of Higher Education expenses, both domestic and international, repayment made inclusive of interest should be allowed as a deduction without any limit over the entire period of the loan repayment U/s 80E.

24. Deduction in respect of person with disability

The existing limit should be enhanced to ₹ 3 lakhs p.a. considering increase cost in Medical Expenses.

25. Deduction u/s. 80TTA for the Senior Citizen, 80TTA should be increased to ₹ 1,00,000.

Proposal for enhance the level of deduction in respect of interest from Savings Bank Account. The existing limit of deduction is ₹ 10,000 per annum. However, Due to demonetization and cash less transaction, the banking habit of the people has been

increased. ***It is accordingly proposed to enhance the limit of exemption to ₹20,000/- and for the Sr. citizen it should be increased to ₹30,000/- all category of assessee. Besides above for senior citizens the limit should be kept at ₹1,00,000/-.***

26. Tax on Distributed Profit

Sec. 115 (O) should be amended to include dividend from Non-Domestic Company.

Object: this will encourage Indian corporate to hold shares or acquire entities abroad.

27. Method of Accounting

Sec. 145 should be further amended to incorporate a certification from a practicing Member of the Institute of Cost Accountants of India to ensure appropriate method of accounting being followed and the provisions of ICDS is appropriately reported. CBDT should come out a detailed procedure, guidelines and audit format in this regard.

Object: a certificate from a practicing Member of the Institute of Cost Accountants of India would ensure correctness of the revenue recognition, tax liability and also appropriate compliance of the ICDS Standards.

28. Threshold limit for TDS

Sec. 194 C – Contract – Threshold limit for deduction of tax at source should be enhanced to ₹ 1 lakh p.a.

Sec. – 194 H – Commission on Brokerage - Threshold limit for deduction of tax at source should be enhanced to ₹ 1 lakh p.a.

Sec. 194 I – Rent - Threshold limit for deduction of tax at source should be enhanced to ₹ 3 lakh p.a.

Sec. 194 J – Professional Fees - Threshold limit for deduction of tax at source should be enhanced to ₹ 3 lakh p.a.

Sec. 194 LC- Interest from Indian Company - Threshold limit for deduction of tax at source should be enhanced to ₹ 5 lakh p.a.

Sec. 194 LD - Interest from Govt. Securities and Bonds - Threshold limit for deduction of tax at source should be enhanced to ₹ 5 lakh p.a.

29. Deduction on remittance to Non Resident

Sec. 195 – after explanation 1 the following should be included:

“Income arising out of any contractual agreement whether arising, accruing in India or not and also whether in relation to activities in India should be considered as

taxable provided the remittance has any bearing with the activities of such non-resident in or in relation to the activities in India"

30. Interest for delay/ failure in payment of Advance Tax

The provisions of Sec. 234A, 234B, and 234C should be amended to rationalised the rate of interest at 1 % pm in every cases.

31. Acquisition of Immovable Property – transferred to evade tax

In Sec. 269A after (d) the following should be inserted

The value of the immovable property should be valued by any practicing Member of the Institute of Cost Accountants of India. The determination of tax, interest and penalty would be based upon such valuation certificate.

32. Assistance by Valuation Officer

Sec. 269L of the Act, after sub Sec. 1 the following should be inserted:

The value of the immovable property should be valued by any practicing Member of the Institute of Cost Accountants of India. The determination of tax, interest and penalty would be based upon such valuation certificate.

33. Penalty U/s 271B

After the 1st paragraph the following should be inserted

"If any person fails to obtain the Valuation Certificate as may be required under any provisions of this Act from any practicing Member of the Institute of Cost Accountants of India, such person shall pay by way of penalty a sum equal to 1-1/2 % of the total value so correctly determined or ₹ 10 Lakhs whichever is lower".

34. Express Provisions for Stay of demand:

Presently there are no express provisions for grant of Stay to the assessee, by the AO. The same are being governed u/s 220(6) which enables the AO to not consider the assessee as "assessee in default" in certain circumstances. An assessee need to apply to the AO himself who has confirmed the demand.

CBDT's vide No.F.No.404/72/93-ITCC dated 29.02.2016 issued revised guideline for stay of demand by AO till CIT(A) order, in modification to Instruction No.1914 dt. 21.03.1996. As per guidelines the AO should grant the stay subject to payment of 15% of tax demanded. This was further modified vide CBDT's office memo dated.31st July 2017 where in payment of tax demanded is increased to 20%.

It is proposed that there should be express provisions delineating the procedure and the powers of the AO to grant stay to the assessee in the Income Tax / Rules itself. As

provided in the Central Excise Act, a procedure like pre-deposit need to be incorporated which will enable the assessee to pay a specified % of demand which will automatically stay the balance demand till the final appeal is completed.

This will pave a clear procedure for the assessee in relation to the stay procedure of litigated demands.

35. Time Limit for completion of Appeals

Currently there is no provision for providing time limits for disposal of Appeals at CIT(A) level and by other appellate authorities above it. The Act should provide clear time lines for disposal of appeal proceedings at all levels. The Income Tax Act provides for time limit for assessments and reassessments. But it does not provide for time limit to complete the appeal proceedings by Commissioner Appeals [CIT(A)] and Income Tax Tribunal [ITAT]. Time limits specified under Sec. 250(6A) - "(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A."/ "254(2A) - (2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) or sub-section (2A) of section 253", are only recommendatory in nature. Contrary to the recommended time, CIT(A)s are issued executive instructions to dispose of cases wherein demands are the outcome of the assessments. This results in huge pendency of appeals, especially the appeals where no demand have resulted.

Keeping time limit of disposal of appeals by Appellate Authorities will put pressure for disposal of appeals which help assessee from wrong / excess tax demands at assessment level .

36. Cost Accountant to be recognized and included in the definition of "Accountant" **Proposed amendment of the Definition of "Accountant"** vide Clause (iv) of sub-Section (2) Section 288 of the Income tax Act, 1961

Sec. 288(2)(iv-v) of Income tax Act, 1961 "accountant" - means

"A Chartered Accountant within the meaning of Chartered Accountants Act, 1949 (38 of 1949), or a **cost accountant within the meaning of the Cost & Works Accountants Act, 1959**" and includes, in relation to any stage, any person who by virtue of provision of sub-Section (2) of Section 226 of the Companies Act, 1956 (1 of 1956) is entitled to be appointed to act as an Auditor of Companies registered in that stage.

Suggestions

Indirect Taxes

Proposal on Indirect Taxes:

Customs Act The rate of basic Custom Duty as applicable to the majority of the Raw Materials imported for completion of the finished goods should be reduced to 8 %, specifically for Steel, Cement, Electronics, Cold storage sectors This would enable the Indian manufacturer to produce at a highly competitive price and significant for Make in India initiative.

Sec. 17 of the Customs Act – Verification

For verification of self assessment, the proper officer would require the Importer or the Exporter or any other person to produce any document or information whereby the duty liable on the imported goods or exported goods are subject to valuation and such valuation would be carried out any practicing Member of the Institute of Cost Accountants of India. In any such proceeding on Sec. 17 the importer or exporter should produce such certificate or document as certified.

Customs Valuation Rules

1. For determination of the appropriate value of the goods imported/ exported and determining duty liability appropriately for filling of bill of entry U/s 46 and 47 of The Customs Act, a certificate from any practicing Member of the Institute of Cost Accountants of India should be made mandatory.
2. In respect of any export cargo / consignment the bill of lading should be verified by any independent valuation agencies it is proposed that any such bill of lading or bill of entry should be counter verified and certified by any practicing Member of the Institute of Cost Accountants of India should be made mandatory.
3. After onset of GST, Special Valuation Branch procedures in case of import from related parties need to be reissued by CBEC.



Proposal on Indirect Taxes:

Goods and Services Tax

1. Correction of typographical errors in the Definition of Cost Accountant :

Section 2(35) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

Definition of “Cost Accountant” in the CWA Act 1959 is given in Clause (b) of Sub-Section (1) of Section (2). If correction is not made, it will deprive Cost Accountants to practice in GST ERA.

2. Sec. 12 of the IGST Act describes place of supply of services in relation to any immovable property as follows:

(a) Directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work.

The above definition creates a clear demarcation of Jurisdictional Territory of the taxing Authority between the states and the same would create more difference among the states. Service provider need to take multiple registrations across the country. The concept of “one India One market” shall be abolished.

Proposal: Sec. 12 of the IGST Act and its all paragraphs towards applicability of place of provision of service need to be reframed.

3. Sec. 12 of the IGST Act describes place of supply of services in relation to any Hotel as follows:

“Services by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or (d) any services ancillary to the services referred to in clauses (a), (b) and (c), shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located”

The above provision disable the Hotel Authority to issue IGST billing to any guest coming from other states and thereby deny uninterrupted credit to the service recipient.

Non availability if ITC would increase the cost and thereby the concept of GST would not fulfill.

Proposal: Sec. 12 of the IGST Act and its all paragraphs towards applicability of place of provision of service need to be reframed.

4. Amendments in the provisions relating to Input Tax Credit

The restrictions on availment of Input Tax credit like GST on club services, insurance services, rent a cab service, motor vehicle repairs and insurance services etc. are presently not available.

Proposal- GST paid by a taxpayer for business purposes should be allowed as Input Tax Credit. For example, erstwhile Maharashtra VAT provisions which allowed Input Tax Credit on expenses debited to P&L Account. GST being a value added tax should be allowed as Input Tax Credit to all tax payers. Restrictions on Input Tax Credit increases cost of doing business for tax payers.

Material purchased from unregistered dealer : The existing limit of ₹ 5000/- should be increased under GST regime in view of large number of unorganised traders. The limit should be based on purchases from each unregistered supplier rather than all unregistered suppliers.

Further, it should be clarified that for all inter state transactions liability to pay GST should be on the supplier and not on the recipient. Section 5(4) of the IGST Act needs to be amended accordingly to maintain consistency between CGST Act and IGST Act.

5. Proposal for GST in respect of Health and Education Sector :

To facilitate the Health and education sector service providers to those sectors need to be taxed at 5%

Applicability of GST on Higher Education beyond Higher Secondary education should be rescinded and the entire education sector may please be kept outside the limit of GST. However, private coaching services may be brought into the ambit of GST as erstwhile applicable to Service Taxes

6. Rationalisation in the rate of taxes in GST

Applicable slab of rate of GST taxes should be reduced to “Three” only with maximum items to be brought into the rate of 12%

Applicability of GST on Telecommunication services, Internet Data services and Entertainment industry should be reduced to 12% as against 18% as applicable as on date.

7. Valuation rule under GST

Under the GST valuation Rules all goods & services are valued at “Open Market Value”. The existing provision of the Rules is stated below:

Value of supply of goods or services where the consideration is not wholly in money where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,

- a. be the open market value of such supply;
- b. if open market value is not available, be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money if such amount is known at the time of supply;
- c. if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- d. if value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by application of rule 4 or rule 5 in that order.

Proposal: it is proposed that determination of the “Open Market Value” should be certified by any practicing Member of the Institute of Cost Accountants of India and should be made mandatory.

8. GST on Higher Education activities

Proposal: GST should not be levied on Higher Education Services including the following:

- a. Services by housekeeping and other related services.
- b. Services by agencies to hostel etc.
- c. Transportation services

- d. Academic and Research material preparation services.
- e. Examination holding services
- f. Evaluation of papers by the Examiners / Professors
- g. Interstate service by the academic / research group including academic research paper evaluation in any interstate situation

It is proposed to remove GST on entire higher education process to encourage quality higher education in the country.

9. Proposal to waive penalty in respect of mismatch

The provision of the Law regarding identification of sales / purchase mismatch and denying credit in respect of such any mismatch would be a difficult proposal for honest tax payers. It is proposed to remove the provision for imposition of penalty as well as denying the ITC credit to the person procure the goods & services, paid taxes and holding all legal documentation.

10. Countrywide single registration concept

To eliminate state to state difference of opinion and views, possibility of difference in taxes and valuation methods and to eliminate the possibility of the difficulty due to multiple state levies and multiple registrations, the Institute proposes to remove the existing concept and bring in the concept of "One Country, One Tax and One Registration"

Credit of CGST should be allowed to a taxpayer across India and should be a common pool. Restricting the CGST credit only to the specific state where the taxpayer is registered defeats the purpose of GST. CGST being a Central levy, there is a strong case for making the credit of CGST fungible across all states. This will make GST a truly national tax at least to the extent of CGST and businesses will be able to offset GST incurred for conducting business across India irrespective of their status of registration.

11. Mandatory certification of TRAN-1 and other stock statements by the Members of CMA

Proposal: the practicing Member of the Institute of Cost Accountants of India should be empowered to certify the authenticity of the opening credit statement as well as stock statements, input output statements, certificate of transition credit and annual audit certificate of any person having GST registration.

12. Immediate processing of Cash Ledger

Cash ledger balance takes 2-3 working days to appear on the GST portal. Only after such cash credit GST return can be submitted. As such it is to suggest that Cash ledger balance should appear immediately upon e-payment on real time basis so that to allow return submission

13. GST rate on Health Insurance

Rate of GST on Health Insurance shall be reduced to minimum level of 5%. This would ensure common people to avail the facility of health insurance services at an affordable price.

14. GST Anti Profiteering Rules and role of the Cost Accountants

The objective of the Anti-Profiteering Rules is to bring in the transparency in the product cost analysis and determination of pricing of any goods and services appropriately. Cost and Management Accountants are the pioneer in the field of cost analysis, cost identification, determination and certification of cost statements. Price could appropriately be determined based upon such cost statement and thereby it could be ensured that actual impact of price reduction on account of and due to implementation of GST.

The Institute and the members should be empowered to carry out Certification of all Cost statements and schedules before placing the same before the GST Authorities for final confirmation. This would ensure appropriate determination of cost, price and would also ensure the objective of Anti Profiteering after the implementation of GST.

15. Amendment in Rule 117 and GSTR-3B

Rule 117 of CGST Act, 2017 provides for carried forward of tax or duty credit under erstwhile law.

Proposal- It is recommended to allow the carry forward of balances immediately so that the same can be utilised for exports. Appropriate amendment may be made in Rule 117 and GSTR-3B to allow carry forward of the opening balances of credit under erstwhile law. Once the GST TRAN-1 is submitted, the balances may be compared with the balances declared in GSTR-3B and if any shortfall is observed, the same may be recovered along with interest. Similarly, if any difference is observed, then the difference should be allowed as credit based on the balances declared in GST TRAN-1.



16. Transitional Credit

Section 140(5) provides “A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day”.

Going by the wordings of this section, it appears that credit will be available only in situations where taxes are paid prior to appointed date but services are received on or after 1st July, 2017. However, there could be scenarios where service is received before 1st July, 2017 but tax is paid on same on or after 1st July, 2017 under reverse charge. However, this scenario is not covered by Section 140(5).

Proposal- It is recommended to provide for inclusion of the credit of all the services on which service tax is payable to be eligible for credit under the said section.

17. Input tax credit (ITC) on shifting of factory from one State to another

As per Section 18(3) of CGST Act, “Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.”

Proposal- *Transfer of the accumulated Credit balances of CGST or IGST should be allowed even in case of shifting of factory from one state to another*

18. Input Service Distributor

As per Section 21 of CGST Act, 2017, “Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of amount to be recovered.”

Each of the unit to whom the credit is distributed needs to rework the amount of credit to be reversed for each of the periods where error is occurred which will be time consuming and involve duplication of efforts.

Proposal- The recovery of credit should be from the Input service distributor and not the recipient since the recipient is not responsible for errors done at distributor stage and it should not impact the recipient.

19. Reversal of Tax Credit on Expired Goods

In pharma, due to the peculiar nature of goods and the regulatory requirement, the goods have shelf life and if the goods are not sold till the expiry date, then the said goods are to be destroyed. This will be applicable for stock lying not only with manufacturer, but also with distributors, retailers, etc.

Under current provisions of Excise, duties on goods lying with manufacturer is only required to be remitted and the input credit on same is to be reversed.

As per the provisions of GST, input tax credit w.r.t. such supplies which are disposed off / destroyed will not be eligible. This will be a cumbersome process to determine the tax credit w.r.t. goods which are beyond shelf life at each chain of supply chain. Moreover, the same would add to the cost burden of the pharma industry, leading to increased cost of medicines.

Proposal- It is necessary to amend the exclusion clause of input tax credit and allow the credit w.r.t. such stocks which are beyond shelf life and lying with distributors / retailers.

20. Late fee for non-filing of return

The late fee should be only for GSTR 3 and not for GSTR 1 and 2 as these are intermediary returns and may not be filed if no transactions.

21. Penalty

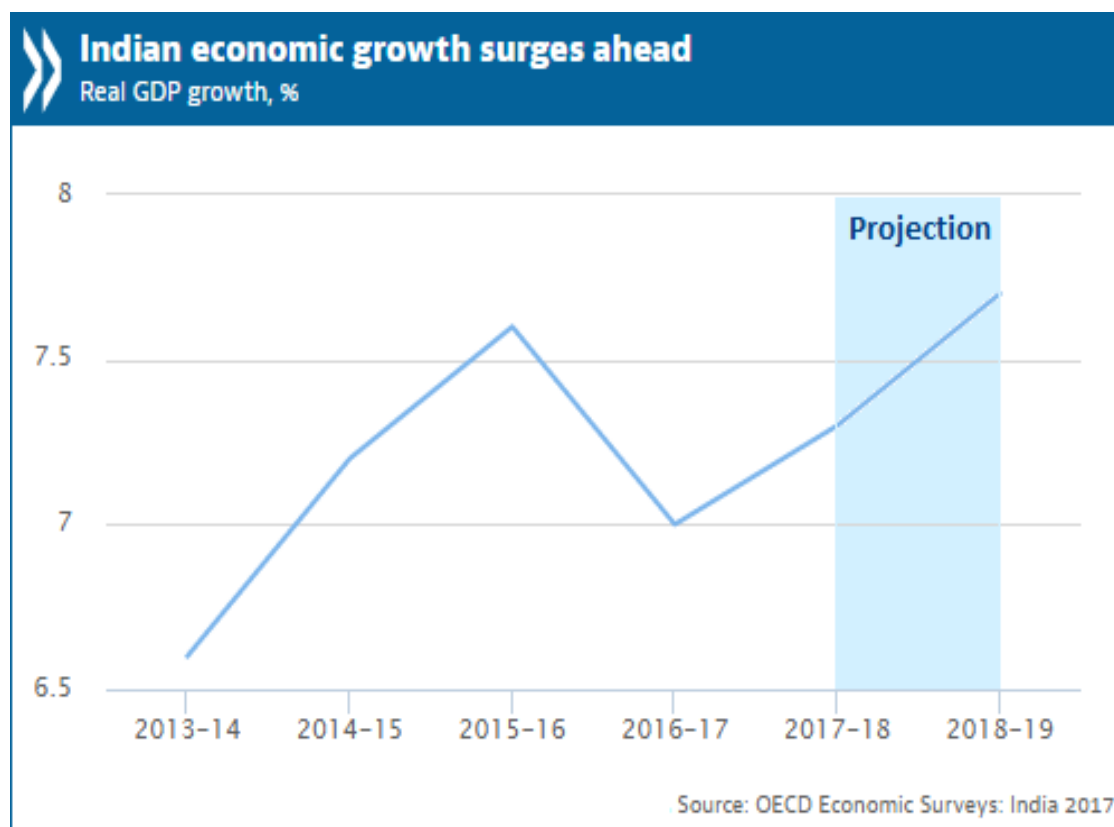
For taxable persons having turnover upto ₹ 1.50 crores, penalty should be ₹ 1,000 only.

Economic Overview

Various economic reforms are taken after independence to effectively manage the economic growth at one end and to balance the inflation trend. Even there are some success stories, but with the global economic downturn, its impact has been seriously felt all levels.

The process of economic reforms initiated in India in 1991 with the realization that if India has to survive, it has to be competitive, i.e., it has to confront the globally competitive environment. Financial Sector reforms in India have formed an important component of the overall economic reform process. With all changes altogether in continuous manner like- New Company Law, Change in Accounting methodology in IFRS way (Ind AS), Major tax reforms through GST implementation etc has created an environment of too many things to be digested in too little time.

The Latest OECD Economic Survey of India finds that the acceleration of structural reforms and the move towards a rule based macroeconomic policy framework are sustaining the country's long standing rapid economic expansion.



The Survey presented in New Delhi by OECD Secretary General Angel Gurría and India's Secretary Economic Affairs Shaktikanta Das, hails India's recent growth rates of more than 7 percent annually as the strongest among G20 countries. It identifies priority areas of future action, including

- Continuing plans to maintain macroeconomic stability
- Reduce poverty,
- Additional comprehensive tax reforms and
- New efforts to boost productivity and reduce disparities between India's various regions.

According to the OECD Report-The Indian Economy is expanding at a fast pace, boosting living standard and reducing poverty nationwide.

International Monetary Fund (IMF) Chief Christine Lagarde has said the Indian economy is on a very solid track in the midterm, days after IMF lowered its growth forecast for the current and the next year. According to her, India for medium and long term, is on a growth track that is much more solid as a result of the structural reforms and have been conducted in India in the last couple of years.

The Reserve Bank of India (RBI)'s The Financial Stability Report 2017, said the ongoing accelerated reform initiatives like goods and services (GST) and continuing political stability will push the economic growth scale to 7.3% in terms of gross value added (GVA) in the current fiscal year.

"Going forward, reforms in FDI and real estate sector, implementation of GST, and revival in external demand are likely to contribute to a better growth outlook. GVA growth is expected to be higher at 7.3% in 2017-18," the FSR said.

On inflation, it projects CPI inflation to be in the range of 2-3.5% in the first half of the year and 3.5-4.5% in the second half.

Government Move towards growth and Development

The Government will place more emphasis to give positive impact a to the country's economy by improving standard of living and well being of the people.

The standard of living of a country depends on country's ability to produce goods and services, Productivity depends on several factors. Government policy can influence the economy's ability to produce goods and services in many ways.

In the last year India has taken important steps to fight against illegal economic activities through demonetization and try to promote tax compliance by implementing GST.

GST is an opportunity. Manufacturers, traders, and service providers across India have been placed under one unified tax umbrella. The shift from the previous tax regime and carry forward the input credits into GST is the biggest challenge that businesses are facing today. Similarly, Various businesses are yet to develop the accounting software and IT systems in line with the new tax provisions. To ensure swift implementation our country needs for GST-skilled resources.

The Government is keen to ensure that the benefit of GST is passed on to the consumers in the form of lower prices, the new framework provides for anti-profiteering measures which would benefit the common people of the country.

To move quickly from the tag of developing economy to a developed economy, India has to pass through many such changes for creating a transparent, effective and conducive business atmosphere. Again, there are two important aspects i.e. Tax to GDP ratio and Low Tax Base of our country are pushing us for much needed tax reforms. India's tax to GDP increased from 10.4% in 1965 to 16.6% in 2015-16, the corresponding tax-to-GDP ratio of OECD (Organisation for Economic Co-operation and Development) countries increased from 21% in 1965 to 33% in 2015. Also among the G-20 Countries, India had the third lowest tax-base, just above Mexico and Indonesia. Therefore, it's the call of time to accept the challenges of the new processes and procedures to effectively contribute towards Nation building.

In this direction, few suggestions are enlisted which covers the broad allocation of funds for various sectors and sub-sectors, initiation of new schemes, and focus areas of the government about the development issues at macro level.

- Import substitution has to be taken care with identification of imported items, its substitution availability in country and a mechanism need to be developed at central level for monitoring this and guiding Indian business for the same with the right set of information available. A target need to be set for import substitution on yearly basis.
- India being a country with 2nd largest population, the man vs. machine aspect need to be perfectly balanced for ensuring long term employment sustainability. Hence, skill development along with development of entrepreneurship skill sets at the basic education level need to be prioritised to manage the unemployment situation. This requires a revamping and reform in our education system.
- To yield the benefit of Make in India, adequate R&D facility need to be created for industries in the similar sector with improvement in technical innovation and global benchmarking.

- CSR funds of Corporate houses need to be consolidated on regional basis and schemes for various developmental activities need to be identified district-wise and a central monitoring cell need to be framed for control and monitoring of fund utilisation and overall development process. This is an area, which need focus and attention for achieving the benefit targeted through CSR activities of Corporate houses.
- Post Capital expenditure outlay of Government schemes need to be analysed for reaching at a conclusion of what was expected through capital expenditure and what actually has been achieved. An independent mechanism need to review and report the effectiveness of the Capital outlay.
- CPSEs need to empowered more and its performance need to be minutely monitored beyond the MoU target. CPSEs can perform better provided its management team is aptly chosen and a performance driven culture is developed.
- Balanced growth at regional level need to be emphasised for managing disparity across country and effective utilisation of natural resources need to be ensured.
- FDI and participation of foreign investors in growth of Indian economy need to be focused in real sense providing them a business conducive environment, specifically land acquisition matter need to be handled effectively.
- Tourism sector for the country has not been fully explored yet and each state has to prepare its roadmap for development of this sector. This can be a good source of improving the Forex reserve.
- Industrial corridor need to earmarked and necessary infrastructure need to be developed in identified Industrial corridor of each state to attract investors.
- Business start-up and enterprising professionals need to be motivated and a separate fund allocation need to be earmarked and a mechanism need to be developed for judging innovative ideas and supporting them.



Executive Summary

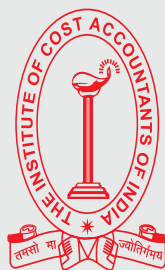
We would like to extend our gratitude to Hon'ble Finance Minister, Shri Arun Jaitley for giving an opportunity to the Institute to submit Pre Budget Memorandum 2018-19.

Suggestions were called from our members for incorporating the same in Pre Budget Memorandum 2018-19. We thereafter compiled the suggestions received from the members and incorporated the same in the final suggestion which we submit for kind consideration.



Objectives of Taxation Committee:

1. Preparation of Guidance Note and Analysis of various Tax matters for best Management Accounting Practices for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit suggestions to the Ministry from time to time for the betterment of Economic growth of the Country.
4. Evaluating opportunities for CMAs to make effective value addition to the tax-economy.



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