



KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)



CA. Kumar S Jigajinni
President, KSCAA

CA. Pramod Srihari
Secretary, KSCAA

Date: 24th February, 2021

To,

Smt. Nirmala Sitharaman

Hon. Union Minister of Finance and

Corporate Affairs

Government of India

North Block

New Delhi

Hon'ble Madam,

SUBJECT: MEMORANDUM SEEKING CHANGES IN UNION BUDGET 2021-22 PROPOSALS

The Karnataka State Chartered Accountants Association (R) (in short 'KSCAA') is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by chartered accountants and business community.

At the outset, we congratulate and applaud sincere efforts of Union Government and your good selves for undertaking and laying down a progressive, optimistic and growth oriented Union Budget 2021-22 which has all enablers to transform India to a truly Atmanirbhar Bharat, amidst unprecedented situations and global & domestic economic slowdown caused by Covid-19 pandemic. This Union Budget can indeed be connoted as rarest budget and so also the budget of this century.

We here in, would like to bring to your kind notice few of the issues which might be faced by taxpayers and Chartered accountants as regards certain specific proposals made in this Union Budget, 2021-2022. In the past, we have written to your good selves many a times populating various issues, challenges and hardships being faced by taxpayers and Chartered Accountants and suggested possible solutions on the same. Here in, we are presenting before your good selves for your kind consideration certain issues, challenges and hardships which the taxpayers and Chartered accountants might face on these proposals of this Union Budget 2021-22. For every issue, challenge or hardship highlighted, we have also suggested solutions to address them all.

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Your good selves are well aware of the current situation across the country and so also in the state of Karnataka. As the businesses of taxpayers were completely shut during lock down face and there was hardly any economic activity which was conducted and although the business activities now have started slowly normalizing, however still there are constraints and challenges that are still there for conducting normal business operations. There are few significant issues, challenges and hardships as regards Union Budget 2021-22 various proposals in the spheres of Income tax law and GST law as listed in two separate tables as below, which we would like to bring to the fore for the attention of your good selves along with recommendations.

A. Recommended changes in Finance Bill 2021 - Income Tax Act, 1961

S No.	Section	Title	Issue/s Involved	Recommendation/s
1	Section 10(11)	Taxation of Interest on PF	<p>There is a proposal to make the interest accrued on Provident fund contribution by employee exceeding Rs. 2,50,000 in a particular year to be taxable on a proportionate basis. This proposal is fraught with few ambiguities as listed below which need to be removed by Government:</p> <p>A. Whether interest accrued on Total Accumulated PF contribution amount till 31-03-2021 is taxable or it is exempt in PY 2021-22?</p> <p>B. How interest accrued in respect of Total PF Contribution during FY 2021-22 which exceeds Rest. 2,50,000 (For example Rest. 2,60,000) would be taxable in FY 2022-23 and any subsequent financial years? Whether interest related to Excess PF Contribution (more than Rest. 2,50,000) of Rest. 10,000 in FY 2021-22 is taxable in FY 2022-23?</p> <p>C. Computation and payment of tax on PF contribution exceeding Rest.</p>	<p>A. It is suggested that ambiguities as explained are ironed out through necessary amendments in proposed provision.</p> <p>B. It is suggested the proposed provision be made applicable from FY 2021-22 (AY 2022-23) and not from FY 2020-21 as envisaged in the Finance Bill 2021.</p>

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			2,50,000 in a year is quite cumbersome and challenging for the small taxpayers especially salary earners.	
2	Section 2(11) read with section 32	Definition of Intangible Assets and Depreciation	<p>There are amendments proposed to section 2(11) to exclude goodwill of a business or profession from the definition of intangible asset and a consequential amendment is also proposed in section 32 whereby depreciation on such goodwill has been proposed to be excluded.</p> <p>Without prejudice to the above, currently it is proposed to amend these provisions from 1st April, 2021, which means it is applicable for FY 2020-21, which is already on-going.</p>	<p>A. The proposed amendment be dropped</p> <p>B. In case Government does not intend to drop this amendment, then alongside continuation of proposed amendment, it is also suggested that it should be clarified u/s 37 that, any consideration paid during the course of an acquisition of a business in excess of the value of the net assets purchased, be treated as revenue expenditure.</p> <p>C. It is recommended that these provisions be made applicable prospectively for FY 2021-22. If not, this goes against the Government's intent against retrospective amendments.</p>
3	Section 44ADA	Presumptive taxation of Professionals	An amendment has been proposed u/s 44ADA whereby, it excluded a specified professional formed by way of a Limited Liability Partnership (LLP) from availing the benefit of the presumptive taxation. It is a retrograde step of the Government which draws discrimination between Partnership firms registered under Partnership Act and Partnership firms registered under LLP Act. As also many small and medium practicing professional entities are being formed by way of an LLP to obtain the benefit available for an LLP of a well governed entity. This amendment could discourage such small and medium professionals from constituting themselves in the form of an LLP.	The proposed amendment be dropped

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4	Section 194Q	Tax deduction on purchase of goods	<p>A new section for deduction of tax at sources called 194Q is proposed to be inserted. This section intends that a customer performing payment to deduct TDS on purchase value of goods from a seller, where the purchase value of goods exceeds Rs.50 lakhs in a financial year. There are similar and parallel provision u/s 206C (1H) where TCS is applicable on sale of goods exceeding Rs.50 lakhs by a seller to a particular buyer in a particular financial year.</p> <p>These transactions are already being tracked by Government under GST law and GST is collected under the same law and hence there is no necessity of tracking these transactions again under Income tax Act neither under proposed section 194Q nor under section 206C(1H). However, it is to be noted that practically implementing the same for a business is extremely challenging. These duplicate multiple provisions create a redundancy and defeat the overarching objective of the Government of bringing in an era of ease of doing business.</p>	It is suggested that, this proposal be re-looked into about its introduction into law as existing law already contains similar provision u/s 206C (1H) and therefore this proposed provision may be dropped.
5	Section 255	Faceless Appellate Tribunal	<p>An amendment has been proposed to section 255, whereby the proceedings before Income Tax Appellate Tribunal is proposed to be made faceless.</p> <p>- The proceedings under Income tax Act are not an administrative procedure but it is a quasi-judicial procedure. Having a faceless mechanism for a judicial formality goes against the fundamentals of Principles of Natural justice.</p> <p>- ITAT is the last fact-finding</p>	The proposed amendment be dropped

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			<p>authority under the Income tax litigation process. Making the last authority where debate on facts can be held, a faceless system would go against the rules of justice in finding the true facts of a particular case.</p> <p>- There are already sufficient safeguards in the manner in which the Members of ITAT are chosen and also in the manner how they operate. There is no necessity to make such an independent judicial body faceless based on the presumption that currently it is leading to malpractices.</p> <p>- The faceless assessment, face appeals scheme have recently been introduced and the outcome of those are not yet known. Making the entire system of tax litigation faceless in such a short run would go against the spelt out intention to reduce cost of compliance. On the contrary, owing to erroneous understanding of facts, a number of unjust orders can get passed. This would result into reversing of Ease of Doing Business.</p>	
6	Section 245B	Abolition of Settlement Commission	<p>Proposed abolition of settlement commission is a retrograde decision. The institution was a brain child of detailed analysis documented in the report of Wanchoo Committee. Chelliah Committee had also endorsed the setup.</p> <p>It was a win-win situation for both assessee and department as it helped reduce litigation and accelerated collection of taxes. In the alternative the commission or similar institution may be continued with a high fee of settlement for example 7.5% or 10% of income settled.</p>	It is humbly prayed that the proposal to abolish settlement commission be dropped.



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7	Section 206AB & 206CCA	Higher TDS & TCS for Non-filers of IT returns	The proposed new sections 206AB and 206CCA proposed would add further compliance burden on the taxpayers which necessitates validation of vendors/payees whether they are non-filers of income tax return. For non-filing of IT returns, there are already penal consequences as per existing law and there is no need to impact cash flow of vendors/payees with higher TDS/TCS rates.	The proposed new sections namely 206AB and 206CCA may be dropped
8	NA	Income tax slab and savings	<ul style="list-style-type: none"> - Increase the minimum income slab on which tax is not payable for individuals and thereby reduce income tax burden of individual taxpayers - Increase the deduction limit of 80C and other chapter VIA deductions 	Allow more disposable income in the hands of people and thereby increase demand and consumption
9	NA	Process efficiency	There is inordinate delay happening in processing Income tax returns filed by taxpayers and eventually issuance of refunds.	Enhance processing speed of income tax returns and thereby faster processing of refunds
10	Section 54 and 54F	Capital gain tax exemption	Due to Corona Covid-19 pandemic situation, since March 2020, citizens who were most vulnerable to this viral infection were the senior citizens' class who literally could not move out of their homes for long time and therefore they could not meet conditions of time limitation of 2 or 3 years for purchase/construction of new houses to avail the capital gain tax exemption. Further there has also been an inordinate delay in securing possession certificates from the relevant Government authorities affected by Pandemic situation.	Considering the genuine hardships faced by many citizens coupled with irregular functioning of relevant Govt authorities, to enable the taxpayers to comply the condition within statutory time limit for availing Capital gain tax exemption, a further relief be provided as a special case by extending the time limit by One more year for investment of the amount in to new residential properties to avail the capital gain tax exemption.



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11	Section 11(1)	Application of Income for Charitable or religious purpose	Due to Corona Covid-19 pandemic situation, since March 2020 many charitable or religious institutions could not ensure compliance of utilization of income of at least 85% as stipulated in section 11(1). In the said situation, no major projects or activities were carried out by these institutions for charitable or religious purpose. Though the surplus income was accumulated and invested in the modes of investments listed in section 11(5), in respect of few of the institutions, they could not utilize the funds within the stipulated 5 years' time due to the genuine reasons cited above.	Necessary relief be provided having regard to the extra ordinary pandemic situation prevailing in the country, by extension of time limit for utilizing the accumulated funds by One more year in the case of institutions whose 5 years' time limit is expiring during FY 2020-21 or 2021-22.
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B. Recommended changes in Finance Bill 2021 - CGST Act, 2017

S No.	Section	Title	Issue/s Involved	Recommendation/s
1	Section 7(aa)	Supply Definition	As per proposed new insertion of clause (aa) to section 7 of CGST Act, 2017 it appears that the transactions inter se between association/entity with its constituents or vice versa is covered under the scope of Supply, retrospectively, notwithstanding any order, decree, law for the time being in force. It appears that the same is done to neutralize the Hon'ble Supreme Court's Judgement in Calcutta Club case where the principle of mutuality was invoked. This proposed retrospective amendment not only renders judgement of Hon'ble Supreme court as referred above,	The proposed amendment be made applicable prospectively instead of retrospective effect.

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			but also it creates unwarranted additional tax burden on taxpayers who have taken the position of principle of mutuality and therefore not paid taxes.	
2	Section 16(aa)	ITC eligibility	The proposed insertion of clause (aa) to Sec 16 requires reporting of outward supply by supplier to enable the recipient to avail ITC. This would burden businesses and would make it a very tedious process and would deprive the genuine supply recipients from availing bonafide ITC on such purchases. Since there could be a delay in filing of returns by vendors in few genuine instances, appropriate explanation needs to be provided as to the point of time by when this condition is to be met.	The frequency of this assessment/compliance/validation may be reduced to Annual instead of month/quarter/transaction basis, within due date of filing subsequent year's September return.
3	Rule 36(4)	ITC restrictions	The GST rule 36(4) currently provides a margin or freedom for claiming ITC against not reported outward invoices by suppliers to extent of maximum of 5% of reported outward invoices. This has a major cash flow impact on the honest taxpayers who have followed all the precepts of law envisaged out from them, but for the inefficiency or non-compliance by the supplier.	The rule be dropped, as section 16(aa) is being proposed to be inserted to the Act.



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4	Section 35(5) & Section 44	GST Audit	<p>Bigger catchment area of GST is enabled through a wider and deeper definition of term "supply". This will remain undiscovered in perpetuity. Such new services include:</p> <p>(a) Contractual clauses with non-monetary considerations</p> <p>(b) consideration requiring valuation</p> <p>(c) Cross border transactions, supply without consideration etc.,</p> <p>(d) Due to frequent changes in the law in the form of notification and circular, and the tax professions help is sought by the tax payer for better compliance of law.</p>	<p>The proposed omission of section 35(5) to be dropped. GST Audit be reinstated to reduce litigation at future point of time and also to ease the process of revenue collection on account of reconciliation and other issues that would get addressed in audit done by independent professionals.</p> <p>Genuine, wrong interpretation of the law with a self-certification might result in huge outflow of funds in the form of interest and penalty to the taxpayer. This might lead to more litigation and unrest among the taxpayers. The Chartered Accountants help in early detection of any deviation and render professional value added service to SMEs and other large sectors.</p>
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5	Section 50	Interest of late payment of GST	<p>Retrospective amendment provides interest on cash ledger utilization only in case there is a delay in filing the return in which a liability was to be reported. However, expectation is to also cover the below mentioned situations in the proviso so as to ensure that there is no interest if payments are made using electronic credit ledgers:</p> <p>a) Supplies made during a tax period but declared during a subsequent tax period and paid through ITC</p> <p>b) Liability missed out in 3B & 1, discharged through DRC-03 using ITC</p> <p>(c) Clarity is sought on the point of time/event to say the "commencement of proceedings under Sec 73 and 74 of the GST Act"</p>	<p>Considering that it is retrospective amendment, a clarificatory circular be issued allowing refund of interest to those tax payers who have already paid interest on gross basis, to the extent of interest paid concerning ITC utilized.</p>
6	Section 75	Determination of tax	<p>Sec. 75(12) permits direct recovery u/s 79 of the self-assessed tax without adjudication u/s 73 or 74.</p>	<p>If the error is committed for bonafide reasons by the taxpayers while reporting in GSTR 1 and GSTR 3B, which results in difference in outward supply, an opportunity of hearing should be provided to the tax payer to explain his position before resorting to recovery proceedings.</p>



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7	Section 129	Detention, seizure and release of goods/conveyance	<p>The time limit for issuance of notice for detention of goods or vehicle is prescribed as seven days.</p> <p>Earlier, 100% Tax and 100% penalty was to be paid for release of goods. Now reference is changed to 200% penalty. The same is very harsh in cases of unintentional mistakes. It is seen that even for small errors, demands are raised in relation to E Way bills. If the same continues, 200% penalty would adversely impact the businesses and would consequently result in litigations.</p>	<p>Considering the circumstances and nature of goods, the time limit can be reduced to two working days.</p> <p>The amount of penalty may be appropriately reduced to a reasonable amount having regard to the gravity or seriousness of the non-compliance.</p> <p>In the context of earlier law giving reference to 100% Tax & 100% penalty, said tax amount paid should be allowed as adjustment against tax liability in relevant month's return.</p>
8	Section 16 (IGST Act)	Zero rated supply	<p>- The proposed amendment would restrict Zero Rated Supply on payment of IGST option only to notified class of persons/Goods/Services. This would adversely impact other not notified category of persons/goods/services from availing the benefit of Zero rated supply.</p> <p>- Section 16 has been amended - in case of Zero-rated supply of Goods/services to SEZ Unit or Operator the same is restricted only for the Authorised operations. Clarity is provided on the process/documents required to ensure the usage for authorized operations.</p> <p>- For various reasons and based on approvals, extended time is provided for realization under FEMA. A portion of Forex receivable is also allowed as bad debt to be written off. Appropriate explanation is required on GST implication on non-realization or delay in realization, which are allowed within the provisions of FEMA"</p>	<p>- The relevant portion of the provision which delegates powers to CBIC to notify certain persons/goods/services only to fall within the scope of Zero rated supply be obliterated for giving a fair play to all categories.</p> <p>- Necessary detailed clarifications to be provided on the meaning of authorized operations in SEZ and documentations to be maintained by the supplier/exporter.</p> <p>- Necessary clarification is provided on situations where the delay in receipt of Forex beyond standard time limit is approved by relevant authorities under FEMA law.</p>

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9	Section 47	Late return filing fees	Many registered taxpayers are still unable to file their past GST returns due to Covid pandemic situation and in case they would wish to file their pending returns now, the sheer amount late filing fees itself runs to lakhs for small and medium taxpayers.	One more amnesty scheme should be provided to help the taxpayers to clear the backlog of pending returns without any late filing fees, which would help the Government to mobile tax revenue as well.
10	NA	Simplification of Law	The GST law as it stands today is a very complex and uncertain law to understand and to adhere by taxpayers. Too many notifications & circulars being issued at quick intervals and frequent changes in the GST portal have made tax payers to spend their substantial energy and focus on GST law compliance rather than their core business operations.	Simplify the GST Law to ensure it remains a stable law to comply with minimal changes with minimal frequency of such changes in the GST law
11	NA	System Efficiency	The GST portal at present takes lot of time for processing GST returns or to generate certain data from the portal. The wait time the portal takes to process these requests is too high and the same can be thought of to reduce its turnaround time.	The system response time on various requests on the GST portal could be substantially improved to make the portal faster, quick and efficient in response time.

We are presenting before your good selves the above enumerated possible potential issues, challenges and hardships which may be faced by the trade, industry and professionals due to severe impact of Covid-19 lockdown & other reasons and also recommendations for your kind consideration and we herewith earnestly request your good selves to kindly make appropriate changes in related proposals of the Finance Bill, 2021 to address various issues we have highlighted above.

Hence, we the members of Karnataka State Chartered Accountants Association, on behalf of the entire Chartered Accountants community and also on behalf of the trade and industry in the state of Karnataka appeal to your good selves to kindly consider our above recommendations on various issues populated as above and kindly urge you to make relevant changes in the Finance Bill, 2021 before it is promulgated as Statute.

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Yours sincerely,

For Karnataka State Chartered Accountants Association ®

CA. Kumar S Jigajinni
President

CA. Pramod Srihari
Secretary

CA. Ganesh V Shandage
Chairman
Representation Committee

Cc to:

1. Shri. Shri Anurag Thakur, Hon'ble Minister of State, Finance.
2. Shri P C Mody, Hon'ble Chairman, CBDT.
3. Shri Ajay Bhushan Pandey, Hon'ble Revenue Secretary and Special Secretary, GST Council, New Delhi.