FICCI

Expectations from Interim Union Budget 2024-25

1. **Maintain thrust on investments**

- Government capex: The capital expenditure outlay in the last Union Budget 2023-24 was increased by 37.4 percent to Rs 10 lakh crore. Further, latest GDP release reported encouraging data on capital formation. Gross fixed capital formation reported an increase by 10.3 percent in 2023-24. Investment (GFCF) to GDP ratio has improved to a decadal high of 34.9 percent in 2023-24. India's growth has thus been robust. However, India is at an important inflexion point and given the current global developments and associated headwinds, the government should continue to lay major thrust on public capex (on physical, social and digital infrastructure) in the forthcoming budget.
- National taxonomy for green finance: We need an 'Indian Taxonomy' comparable and interoperable with global taxonomies, frameworks and principles. Evaluating exposure to sustainable versus non-sustainable activities is difficult for banks and other financial institutions without a taxonomy. There is a need for a comprehensive national policy framework, including a well-defined standardized taxonomy, for sustainable financing that can define measurement, reporting and verification of sustainable financing to enhance transparency. A taxonomy would nudge banks and other financial institutions to set sustainability targets and align their business strategies with them.

2. **Improve India's competitiveness as a global manufacturing hub**

The government has consistently worked towards creating an enabling environment for making India a global manufacturing hub. Given the current global developments and most advanced countries looking at China plus one strategy, India can truly emerge as the next manufacturing hub. We must leverage this opportunity by incentivising and attracting large investments from global manufacturing companies. The Production Linked Incentive (PLI) schemes are an excellent initiative and are working well. To supplement this, the government could consider extending the concessional tax regime for manufacturing operations for at least five years. (The Finance Act 2021 had extended the sunset date under concessional tax regime of section 115BAB by only one year to 31 March 2024). Many global investors are today considering investment in India and extending such concessional tax regime for 5 years will ensure stability and certainty, thus bolstering confidence of investors to set up manufacturing units in India.

3. **Prioritise innovation and research & development**

It is universally believed that the key driver for economic growth is innovation. Countries across the world are therefore providing various incentives to encourage innovation and R&D under different tax policy measures like Patent Box Regimes, weighted deduction and R&D tax credits.

India also introduced the patent box regime by introducing section 115BBF in the Act in 2016 which grants special concessional rate of 10 percent on gross royalty income earned by 'eligible taxpayer' from patents developed in India without any deduction for any expenditure or allowance.

'Eligible taxpayer' is defined to mean a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970. The present regime is, however, restrictive and requires rationalization to reap the true benefits of this wholesome incentive. Some suggestions are mentioned as below:-

- It is recommended that the benefit of concessional rate of tax of 10 percent of income by way of royalty in respect of a patent developed and registered in India be also extended to sale of patented products manufactured in India[1]. This will indirectly encourage "Make in India" and align with the Government's policy of making India an attractive destination for manufacturing.
- The benefit of provision is restricted to 'true and first inventor of the invention' which is technically difficult to comply since 'true and first inventor' of patent under the Patent law is always an individual. It is recommended that the condition of joint patentee also being 'true and first inventor' be omitted to facilitate the company funding the R&D for development of the patent and owning it as first assignee can claim the benefit of 10% tax rate.

[1] For which imputed royalty embedded in the sale price may be fixed at an appropriate percentage like 10% of sale price (net of GST and other indirect tax levies)

- The requirement of patent being registered in India under the Patents Act raises an ambiguity whether royalty received from overseas in respect of patent which is registered both in India and outside India will be denied the benefit on the ground that the royalty is relatable to foreign patent and not Indian patent. It should be clarified that royalty received from overseas for a patent which is registered in India as also in a foreign country also qualifies for concessional rate of tax.
- Royalty from a patent which is 'registered' alone qualifies for the patent box regime. If royalty income is earned when patent application is filed but registration is awaited, there may be unwarranted denial of the benefit. Hence, it is recommended that the concessional tax regime be extended to royalty income earned from patents which are applied for and awaiting registration as well.

Furthermore, to supplement the Patent Box Regime and encourage investment in innovation and research in India, the concessional tax rate of 15% (effective rate of 17.16% with surcharge and cess) u/s. 115BAB may be extended to new R&D companies which set up R&D facilities of a substantial size within next 5 years. This will incentivise industrial groups to house their R&D activities in a separate entity (instead of "inhouse R&D"). There can be appropriate checks & balances to check abuse like DSIR approval of the facility, investment in new plant & machinery, transfer pricing compliance for transactions with related parties, etc.

4. **Further support MSMEs for meeting their requirement for liquidity and finance**

- Revise the qualifying criterion for mandatory registration on TReDS platform: The TReDS initiative by the Government is a wonderful tool for MSMEs to access fund due at ease. It enables MSMEs to get funds at a cheaper cost with an option to select the offer from various banks without recourse to borrowing. Currently it is mandatory for all CPSEs and companies having annual turnover of more than Rs. 500 crore to register on TReDS platform. It is suggested that registration should be mandatory for all companies having the turnover of more than Rs. 250 crore as it would increase the purview of TReDS.
- Leverage Account Aggregator framework for MSME lending: Currently, legal and compliance issues are preventing joint and corporate accounts from the scope of AA, thereby excluding a vital market segment of MSMEs from benefiting from AA. A concerted effort led by Ministry of Finance and regulators would help address this issue.
- Change in NPA classification norms of MSMEs: It is recommended that the 90 days limit for classifying overdue of MSMEs should be increased to 180 days so that MSMEs are not constrained to divert their working capital towards servicing of their loan-instalments and clearing of their overdues at the cost of normal business operations. This improvement will save a large number of MSMEs from turning sick or getting closed resulting in loss of economic activity and employment. This will also prevent avoidable classification of bad debts and unwarranted litigation by banks, thereby saving the banks from losses.

5. **Simplify compliance with respect to TDS**

The provisions of tax deduction at source have added to the compliance burden of the taxpayers. Currently, under the Act, there is a wide variety of TDS provisions applicable to payments to residents with different rates and different thresholds. This gives rise to unwarranted disputes related to categorisation and interpretation. To further enhance the ease of doing business, the government should consider laying down a roadmap for rationalisation of TDS rate structure. It is suggested that there be only three rate structures for TDS payments – TDS on salary at slab rate and two standard rates for TDS for different categories. The standard revenue-neutral rates may be evaluated and worked out by the Revenue department based on data analytics. Besides, there should be a "negative list" of payments which will not be liable to TDS (like payments to senior citizens, exempt income payments, purchases from GST registered entities on which GST is paid, etc). This will considerably ease the compliance burden on the taxpayers and avoid litigation on characterisation disputes.

6. **Remove double taxation on Buy-back through open market purchases**

Public listed companies are now increasingly adopting 'open market through stock exchange' method for buy-back purposes. Given that the buy-back under the 'open market through stock exchange' method happens on recognized stock exchange and with no prior knowledge to either party of the identity of the seller, the seller would undertake the transaction knowing fully well that he would be liable to pay capital gains tax on the sale or as business income if shares are held as stock in trade.

As neither the company nor the shareholder knows the fact that the particular shares have been bought back, and there is no proper mechanism in place to convey the information to the shareholders by SMS or email, tax is paid by both – capital gains/business income tax by the shareholder and Buyback Distribution Tax (BBT) by the company on the same transaction, resulting in double taxation.

As BBT was introduced to curb tax avoidance by the companies using the buy-back route and given that the promoter group cannot participate in buy-back in 'open market through stock exchange' method the justification for levy of BBT does not exist in such cases.

Hence, BBT should be exempted in case of listed shares wherein buy-back is under 'open market through stock exchange' method. Consequentially, exemption under section 10(34A) should also not be applicable and the transactions should continue to be subject to capital gains or business income tax in the hands of the shareholders.

7. **Tokenize collateral for credit growth :** The banking industry could collaborate with regulatory bodies to ease access to collateral by accelerating the creation of digital securities. Securitisation of physical collateral such as land and vehicles, would allow for digital verification and lien-marking. A significant step towards this would be to digitise land records under the Digital India Land Records Modernization Programme. Similarly, the Account Aggregator framework can be leveraged to accelerate the adoption of information collateral such as invoices and securities and increase credit penetration. A centralised blockchain-based, asset-specific utilities could be incubated to enhance digital security creation.

8. **Support the evolving start-up ecosystem in the country by bringing parity between long-term capital gains (LTCG) tax on listed equities and unlisted equities**: FICCI submits that listed and unlisted equities are treated at par for computation of LTCG. LTCG parity for unlisted entities will go a long way in increasing the attractiveness for domestic and international investors towards start-up and unlisted equity investment in India. Second, employees in such value creating unlisted entities who have been granted ESOPs by such companies will benefit as they will be able to exercise liquidity by selling their stock options within a short period over various prior to IPO rounds as the unlisted entities grows over a decade towards IPO.

9. **Extend deferral of taxation on ESOP perquisite to all employees – not merely employees of section 80IAC qualifying start-ups:** The provisions of deferral of tax on ESOP perquisite are applicable in cases where the ESOP shares or sweat equity shares are allotted directly or indirectly by start-up which is eligible under section 80-IAC of the Act. Accordingly, the ESOP shares or sweat equity shares allotted by entities other than "eligible start-up" (including start-ups registered with DPIIT but not eligible u/s 80-IAC) are not covered under the new scheme of deferral of tax on income. The intent behind introduction of the scheme for deferral of taxation w.r.t. ESOP scheme is introduced for start-ups as payment of TDS or tax at the stage of exercise of option creates difficulty due to lack of adequate liquidity with the employer and employees. Further, the component of ESOP shares forms a larger part of salary income of employees of start-ups. It may be noted that circumstance of liquidity crunch may not be restricted to a case of start-up but may extend to other taxpayers as well. It is recommended that the benefit of deferral of tax should be extended for ESOPs granted by all employers.

10. **Introduce a new independent Dispute Resolution forum for effective and time bound dispute resolution**

While the industry appreciates the Government's efforts to reduce pendency of litigation at CIT(Appeals) level by creating 100 new posts of JCIT(Appeals) to deal with smaller appeals, it is necessary to explore means to reduce litigation at the assessment or post assessment level itself in a time bound manner through an independent forum. The existing forums of Dispute Resolution Panel (pre-assessment stage) or Dispute Resolution Committee (post assessment stage) or advance rulings through Board for Advance Rulings (BAR) have inherent drawback of being adjudicated by revenue officials.

Hence, it is suggested to introduce a new forum comprised of independent experts like retired judges of Supreme Court or High Court, retired President/Vice President of Tribunal or professionals like lawyers or Chartered Accountants with a stipulated minimum experience to deal with disputes at assessment or post assessment level in following manner :-

a) Additions involving minimum quantum of tax demand (say, Rs. 1 Cr and above) to be referred to the forum

b) Forum to mandatorily adjudicate within a stipulated period (say, 1 year)

c) Adjournments to be restricted to 3 occasions for either party failing which the Forum to decide the matter on the basis of evidences and submissions on record.

d) Forum to communicate its draft order to both parties and give opportunity before passing final order

e) If the draft order is not acceptable to either party, either party to have liberty of withdrawal of the reference to the Forum and resort to other conventional appellate remedies

f) Once final order is passed, it is binding on both Tax Department and taxpayer.

g) No demand to be raised or recovered during pendency of reference to Forum

h) No penalty or prosecution on additions sustained by Forum

Time bound resolution by independent forum will build confidence amongst taxpayers who may come forth to settle the matters instead of pursuing litigation in fear of penalty and prosecution. It will reduce litigation and improve 'ease of doing business' in India.

Also : Expand scope of Dispute Resolution Committee to all taxpayers

Finance Act 2021 inserted section 245MA in the Act with an aim to resolve specified disputes in relation to specified Taxpayers. The section also specifies New Dispute resolution committee (DRC) to be set up to undertake dispute resolution in a faceless manner involving dynamic jurisdiction. Constitution of DRC and the overall scheme was notified on 5 April 2022 vide Notification No. 26 /2022 and 27/2022.

The DRC has powers to reduce or waive any penalty or grant immunity from prosecution where dispute is resolved through this forum. The scheme is available on a voluntary basis to taxpayers and is alternate to appeals mechanism.

However, the scheme is limited to small taxpayers where the returned income is less than Rs. 50 lakhs and disputed addition is less than Rs. 10 lakhs. The rationale for keeping out mid-sized and large sized taxpayers outside the proposed scheme is not clear. It is recommended that the current threshold limits of returned income of Rs. 50 lakhs and disputed amount of Rs.10 Lakhs should be eliminated to cover mid-sized and large sized taxpayers as well.

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