Internet And Mobile Association Of India

IAMAI PREBUDGET SUBMISSION 2021

Fiscal Incentives and Direct Taxes

The Internet and Mobile Association of India, [IAMAI] on behalf of its members would like to make the following submission for consideration of the Ministry of Finance for the Union Budget.

The submission is made in the context of the ongoing COVID crisis and associated economic meltdown. The digital services have proven to be critical during these times of crisis and are expected to play greater roles in the 'new normal' conditions. It also comes in the context when due to general economic slowdown certain digital sector services have been adversely affected. The fast-emerging tech start-up sector in India, which was seen to form the backbone for a vibrant Digital India, has taken a massive hit due to lack of funding and businesses. It is imperative that the Indian digital sector is given due consideration given the future context.

The submission, consisting of asks from the digital services sector along with mobile manufacturers, cover the entire digital ecosystem and is expected to provide impetus to the vision of Digital India.

FISCAL AND REGULATORY INCENTIVES FOR REVIVAL

The ongoing economic slowdown requires proactive sectoral fiscal intervention and regulatory support to revive demand-supply dynamics. The digital services sector, that facilitate erstwhile traditional services, have their fortunes tied to the fortunes of the extant sectors and many of these services are suffering from the contagion effect of slowdown.

Some key sectoral incentives requested are:

TRAVELTECH

- Special announcement of term loans and Working Capital loans for the sector along with doubling of existing overdraft limits for the industry and immediate cash relief to be given to avoid mass lay-offs of employees.
- GST holiday for travel and accommodation sector for extended period and abeyance of TCS/TDS deductions for OTAs.
- All registered homestays, under the Incredible India B&B scheme or any other scheme promoted by respective states, should be recognised as MSMEs and made eligible to access Mudra Loans or other loans extended by the financial institutions, without the need for re-registration under the MSME schemes. This will enable access to the much needed capital to stay afloat during these difficult and unprecedented times and also allow them to plan when recovery begins.

- Homestays are not hotels because they provide a very different experience from the hotel. They also do not offer the same amenities as 5 star hotels. And yet, the GST rate for both hotels and homestays continues to remain the same. In order to promote and support these microentrepreneurs, it is recommended that the GST for homestays and B&Bs is brought down to 2-5%.
- LTA plays a great role in domestic travel and tourism but unfortunately does not cover the cost of accommodation. It is suggested that accommodation at commercial hospitality service providers be included under LTA.

HEALTHTECH SERVICES

- Healthtech sector be recognized as essential/ critical service and all expenses incurred for healthcare including via digital platforms be allowed under tax deductions.
- All restrictions on online sale of drugs for critical, chronic and continuing patients be removed. Supply of regularly used medicines be streamlined and healthech services operating in this sector be opted as partners by the Government in this time of crisis with fiscal incentives to service EWS category.

EDUTECH SECTOR:

- The rate of Goods and Services Tax (GST) for e-learning be reduced from the existing 18%. It must be noted that many offline educational services are zero rated.
- Allow weighted deduction (say 2x) on all employee costs for corporate income tax purposes.
- Government to sponsor certain portion of the fees (say 15-20%) of the total course fees for certain categories of basic/ essential e-learning for the poor sections of the society so that they can upskill themselves.
- Acknowledge the essential nature of ICT Hardware to providing education and prioritize access for children, teachers, schools, and ed-tech firms alike and incentivize their purchase.
- Emphasis be placed on developing cloud-based learning platforms and training programs with special fiscal packages to educational institutions for such capacity building.
- With much of formal education now adopting online training processes, online assessments are the next logical extension. Digital services providing online assessment mechanisms need to be incorporated under different School boards with budgetary outlay for developing pan national online assessment platforms for board exams, national level entrance exams, etc.

DIGITAL ADVERTISING

- Special Industry status for digital advertising , to help raise funding from financial institutions
- The rate of GST on digital advertising on News websites (whether operating as a division or a subsidiary of a registered newspaper or broadcast services) be reduced to 5% from the current 18% for advertising and 12% for content creating and publishing on microsites, to bring it at par with Newspapers. This will provide some minor stimuli to nudge advertisers to invest in brand building and work with reputed digital publishers that add value to public discourse.
- Digital advertising spends by brands for public service campaigns on health & education to be brought under the mandatory CSR spends.

DIGITAL PAYMENTS

- Presently, at the time of issue / re-issue, all cards (physical and virtual) have to be enabled for use only at contact-based points of usage [viz. ATMs and Point of Sale (PoS) devices] within India. Customers who have opted for contactless and CNP/online usage are inconvenienced with procedural requirements every time they receive a re-issued or a new card for their same account number or relationship with the bank. It results in transaction declines and customer dissonance for digital payments, and will resultantly increase cash payments. Therefore, all cards, newly issued or re-issued, should be activated with Domestic Card Not Present [CNP], Contactless Transactions and online transactions by default for domestic transactions with an option of the customer only calling to opt-out.
- Contactless transactions limit be reviewed and be increased up to INR 3000 without pin as opposed to the current limit of INR 2000 and in case of no contactless POS, there should not be the need for punching in the pin in a dip transaction up to a limit of INR 3000.
- Encourage a common KYC for all financial products by synchronising the KYC norms of RBI and SEBI, and leveraging the Central KYC Records Registry (CKYCR). The commercials of CKYCR should also be reviewed to allow monetary incentives for businesses to sharing data with the CKYR and charges for accessing data from the pool.
- Strengthen the Payment Infrastructure Development Fund (PIDF) and encourage QR based payment infrastructure in Tier- III towns for greater digital payment penetration.
- Allow payment banks to become ‘Agency Banks’ to collect tax and non-tax receipts for Central and State Governments.
- TRAI and Telcos should take effective action under the TCCCPR 2018, so that phishing messages are not allowed in bulk; lookalike headers are not allowed to be registered so that frauds can be reduced and people trust digital payments. TRAI should mandate Telcos to block the phone numbers of Unregistered telemarketers (UTMs) sending UCC including through phone calls, to the Bank/ Financial Institution customers.

DIRECT TAX

SECTIONS 194-O & SECTION 206-C OF INCOME TAX ACT 1961

Issue at hand: Finance Bill 2020 introduced two new provisions that adversely affect doing businesses via digital platforms.

The first is Section 194-O that requires e-commerce platforms to deduct TDS (over and above TCS). All forms of withholding taxation create cash flow and working capital concerns, especially for the numerous small-scale sellers seeking wider market access via e-commerce platforms. It also raises administrative burden and compliances for such small-scale sellers in form of reporting and reconciliation. This reconciliation process has proved to be challenging for TCS under GST, and replicating it under TDS further inconvenience sellers already finding it more cumbersome to conduct their operations online because of such onerous compliances.

Some of the areas of concern with Section 194-O are:

- The 1% TDS rate proposed under section 194-O will likely exceed the Income Tax liability of many sellers. The creates unwarranted challenges as working capital of sellers will be blocked until such time a refund of the excess TDS is received.
- The provisions of Section 194-O apply on the 'Gross Amount' of the transaction whereas Gross amount for has not been suitable clarified as to whether it excludes commission component, other taxes and levies.
- The provision needs to accommodate sales returns under e-commerce and how to rectify in such an eventuality.
- The provision is not clear as to which agency is supposed to make the deduction in cases where multiple e-commerce operators are involved, as it often happens in the case of Online Travel Aggregators.
- Explanation to section 194-O(1) read with section 194-O(6) suggests the e-commerce operators are to deduct TDS even in cases where direct payment is made by customer to sellers for sale of goods or provision of services. In certain types of e-commerce transactions, where the transaction takes place directly between buyer and seller, the e-commerce operator does not have visibility over the transaction and may not be aware of the pricing, conclusion of the contract, etc. Obligation to deduct TDS in such cases may be nearly impossible to implement and therefore, highly burdensome and unreasonable. E-commerce operator should be liable for TDS only when payment is routed through such operator or the operator has knowledge of the transaction.
- Overseas service operators are not taxable under the Indian jurisdiction and hence servicing such services should be exempted from TDS deduction.
- There is presently no clarity on TDS applicability in case of sales of Gift Cards as it risks double taxation at times of issuance and redemption of the same.

The second provision is Section 206-C which stipulates that every seller who receives sale consideration for goods exceeding INR 50 lakh in any previous year shall collect from the buyer TCS of 0.1% of the sale consideration exceeding INR 50 lakh. Where the buyer does not furnish his Permanent Account Number (PAN) or Aadhaar number to the seller, then the tax shall be collected by the seller at the rate of 1%. Taking the most simplified view of a retail supply chain, which includes a supplier, a wholesaler, and an e-commerce seller/ offline seller; under the proposed regulations, a product would go through two instances of TCS under Section 206-C of IT Act, one instance of TCS under GST, and one instance of TDS under Section 194-O of IT Act.

IAMAI Suggestion

- Section 206-C be kept in abeyance indefinitely.
- The issues pertaining to Section 194-O be clarified and the rate be reduced from 1 % to 0.25 % to prevent loss of working capital for MSMEs.

MERCHANT DISCOUNT RATE

Issue at hand: In the Union Budget, announced on 05 July' 19, the Honourable Finance Minister proposed that "…….*the business establishments with annual turnover more than 50 crore shall offer such low cost digital modes of payment to their customers and no charges or Merchant Discount Rate shall be imposed on customers as well as merchants. RBI and Banks will absorb these costs from the savings that will accrue to them on account of handling less cash as people move to these digital modes of payment..."*.

Accordingly, the following amendments have been done through the Finance Bill:

Payment and Settlement Systems Act, 2007 ('PSS Act')		**204.** In the Payment and Settlement Systems Act, 2007: *"10A. Notwithstanding anything contained in this Act, no bank or system provider shall impose, whether directly or indirectly, any charge upon a person making or receiving a payment by using the electronic modes of payment prescribed under section 269SU of the Income-tax Act, 1961."*
Income Tax Act		**60.** After section 269ST of the Income-tax Act: *"269SU. Every person, carrying on business, shall provide facility for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes, of payment, if any, being provided by such person, if his total sales, turnover or gross receipts, as the case may be, in business exceeds fifty crore rupees during the immediately preceding previous year.*

Further on **30th December 2019**, Department of Revenue (DoR)"

- issued a gazette notification which inserted Sec 119 AA in the Income- tax Rules 2019, specifying the electronic modes of payment, if any provided by such person, namely: *(i) Debit Card powered by RuPay; (ii) Unified Payments Interface (UPI) (BHIM-UPI); and (iii) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).*
- made Sec 269SU on the Income Tax Act and Sec 10A of the PSS act applicable with effect from 1st January 2020.
- also inserted Sec 271DB, which provided levy of penalty for failure to comply with provisions of Sec 269SU post 31st January 2020.

The amendments made in the PSS Act followed by the notifications prohibits the charge of MDR by the PSPs and bank for RuPay Debit card and UPI transactions to the merchants or the customers. This means the service of payments needs to be offered without any revenue – and this would kill the Payment Service Providers (PSPs) and adversely impact banks in the long run. This makes the payments industry unviable and creates unprecedented negative externalities for the full digital payments ecosystem.

Zero MDR on Rupay Debit Cards and UPI is not helping the payments industry to digitize the MSMEs as MDR is the primary source of revenue for the participants in the payment ecosystem and a Zero MDR mandate severely hampers the ability to invest and grow the ecosystem. As a result, MSMEs are being impacted in terms of not having a wide range of payment service providers offering them digital payment solutions.

The cost attached to developing the payment infrastructure and sustaining the same, is substantial enough and it is not viable for players to cover the same from ancillary sales.

There has been substantial pullback from the investor community in these payment companies as there is no clear direction of any revenue flow in these companies.

While industry has been working on ZERO MDR but is facing serious issues to continue it further as they have incurred a loss of Rs. 900 crores for UPI and Rs. 700 crores on RuPay Debit during the period Jan to Sep 2020. At this rate, industry which is already being questioned by its investors on viability will not be able to invest further on expansion and adoption of digital payments acceptance. Eventually, the industry will also be under pressure to maintain the existing infrastructure, with no revenue for servicing the clients.

It will have a more significant negative impact on the payment ecosystem –innovation, job losses and slowdown in the expansion of the digital payments in the MSME sector and overall across India.

IAMAI Suggestion:

There is full alignment as regards the necessity and benefits of digital payments:

- Enable more and more businesses, particularly MSMEs, to transact digitally
- Enable more individual to transact using digital channels
- Enable creation of sustainable models and job creation in the digital payment ecosystem
- Drive more investment into the digital ecosystems

Keeping the above in view, we propose the following model that balances the interests of both the users (businesses) and providers (payment ecosystem players) of the payment services.

1	MDR Suggestion		
		Merchant Category	**MDR**
	Product - UPI	For small merchants with annual turnover of upto ₹ 20 lakhs (during the previous financial year)	Upto 0.15% (with a cap of MDR amount at ₹ 100)
		For all other merchants	Upto 0.30% (with a cap of MDR amount at ₹ 100)
	Product – Rupay	For small merchants with annual turnover of upto ₹ 20 lakhs (during the previous financial year)	Upto 0.15% (with a cap of MDR amount at ₹ 150)
		For all other merchants	Upto 0.60% (with a cap of MDR amount at ₹ 100)
2	Delete / remove Section 10A of the Payments and Settlements System Act, 2007		
3	Amend Rule 119AA of the Income Tax Act to remove BHIM UPI, UPI QR and Rupay; if needed substitute with “NEFT/RTGS”		
4	Consider deleting Section 269SU and related Section 271DB		

The above measures will drive digital transactions in a balanced and 'Atmanirbhar' manner, creating additional employment opportunities, attracting capital and making the economy more transparent.

TAX DEDUCTION AT SOURCE ON DIGITAL PAYMENTS, NOTIFICATION NO. 47/2016

Issue at hand: As per Notification No.47 / 2016, dated 17.6.2016, issued by the CBDT, Ministry of Finance, there will be no deduction of tax at source under Chapter XVII of the Income-Tax Act, 1961, on payments of the nature specified thereunder, viz;

(i) Payment made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank; or

(ii) Payment to any payment systems company authorized by the Reserve Bank of India under section 4(2) of the Payment and Settlement Systems Act, 2007 (PSS Act).

The exemption from tax deduction at source is available to Banks and Clearing House as per the above notification and not explicatively to Prepaid Operators as they get authorised under section 7 of the Payment and Settlement Act, even though they offer Prepaid Cards which operate on the same lines as Debit Cards offered by Banks.

Besides, Payment Companies are doing the same activities that are undertaken by Banks with regard to issuance of PPI's as well as settlement to Merchant establishment. The business model being the same, exemption on TDS on commissions having been already provided to Banks needs to be extended to the Payment System Companies as well.

IAMAI Suggestion

- In the light of the aforesaid discrimination of the TDS treatment on similar product offered by two classes of Regulated Entities by RBI, it is requested that the same be extended to payment systems company authorized by the Reserve Bank of India under **section 7 of the Payment and Settlement Act, 2007 (PSS Act)**, as well.

INCREASE TDS LIMIT FOR SECTION 194B

Issue at hand: The thresholds limit for payment made with respect to the distribution of prize money from winnings from lottery or crossword puzzle or any sort of game mentioned under Section 194B of the Income-tax Act, 1961 ("IT Act") is currently INR 10,000. Such limit was increased from INR 5,000 vide Finance Act 2010.

Given consistent inflation in the Indian economy and the fact that the last increment was over a decade earlier, the limit needs to be reviewed to protect small winners from the burden and hassle of filing tax returns/ claiming refunds etc.

IAMAI Suggestion

- IAMAI recommends to increase the thresholds under Section 194B of the IT Act to INR 50,000/- in the present context.

RULE 3(7)IV OF THE INCOME TAX ACT: VALUATION IN RESPECT OF GIFT, VOUCHER OR TOKEN

Issue at hand: The provision of Gift, Gift Vouchers or Token was allowed as a tax-free perquisite upto Rs 5000/ per annum for any Gift given by an employer to employee or their family on ceremonial occasions or otherwise. Digital Gift Vouchers play a major part in motivating and creating good will between the Employer and Employee. These Digital Gift Vouchers also are immediately spent creating demand in the economy. The value of Rs 5,000/ should be upgraded to Rs 15,000/ looking at the passage of time since this value was set.

IAMAI Suggestion

- The value of Rs 5,000/ should be updated to Rs 15,000/ looking at the passage of time since this value was introduced.

RULE 3(7)III OF THE INCOME TAX ACT: PREPAID DIGITAL MEAL VOUCHERS FROM EMPLOYER TO EMPLOYEE FOR FREE FOOD & BEVERAGES

Issue at hand: The Digital Meal Vouchers have played an important part during the pandemic in allowing the employer to extend Meal benefits at their home office. They have become an essential part of the new work reality. However, the tax-exempt amount at Rs 50 per meal while being sufficient in 2001 has lost most of its relevance in 2020.

IAMAI Suggestion

- The amount allowed for meals should be sufficient looking at the prevailing food prices in the market and a modest increase in the tax-exempt limit to Rs 75 per meal should be considered.
- Electronic Prepaid Meal Vouchers should be allowed as an exemption for even those employees availing to file their returns under the new section 115BAC (1), and should be included as an allowed exemption under the new proposed section 10(14) as:
  10(14)e): free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through electronic paid vouchers which are not transferable and usable only at eating joints

CLARITY ON EXPANDED SCOPE OF EQUALISATION LEVY BY FINANCE ACT, 2020

Issue at hand: Finance Act, 2020 expanded the scope of Equalisation Levy [‘EL’] to include EL @2% on the consideration received by non-resident ‘e-commerce operators’ from ‘e-commerce supply or services’ made to Indian residents or persons using an Indian internet protocol (IP address) and even non-residents under specified circumstances. The expanded provisions of EL is susceptible to alternative interpretations and likely to create significant uncertainty and complexity on scope and magnitude of the levy. For instance:

- The provisions are unclear as regards what would qualify as a digital facility. For e.g. would the expanded EL cover transactions over an email or intra group services rendered with the assistance of internal enterprise resource planning software.
- Expanded EL applies on the consideration received or receivable by a foreign e-commerce operator from online sale of goods or services or from facilitation of such online sales. The base for EL in the context of sale of goods/ services facilitated by the e-commerce operator is unclear. Whether consideration means the amount earned by the e-commerce operator or even amount collected on behalf of sellers who use the service of e-commerce operators needs clarity.
- Interplay of expanded EL with the Income-tax Act, 1961 also needs clarity. For instance, the exemption under Income-tax Act for transactions subject to EL is effective from 1 April 2021 whereas EL came into force from 1 April 2020. Additionally, a transaction which previously qualified as fee for technical services and was subject to withholding at 10% (plus cess and surcharge) could also fall within the purview of 2% EL. The law does not clearly specify whether EL would in such cases take precedence over income tax or vice versa.
- Expanded EL also applies on the consideration received by the e-commerce operators from another non-resident for sale of advertisement that targets a customer who is resident in India, or persons using an Indian IP address. There is lack of clarity on the expressions 'target', 'customer', 'resident of India', without which the charge of EL cannot be properly evaluated in respect of consideration received from non-residents by an e-commerce operator. The current framework, in the absence of further guidance, may cover unintended situations which may not generate any revenue associated with advertiser's activities in India. For instance, the provisions could apply to situations where an online advertisement is merely accessed by a person in India, who was not the target audience for such advertisement.
- There is no guidance on how to determine if a person is 'resident' in India or not for the purpose of expanded EL. Would the 'residency' be determined basis the existing tax rules that require minimum physical stay in India, how would the e-commerce operator obtain the information regarding the customer's stay in India.
- EL not only covers transactions with Indian residents but with any person who uses an Indian IP address. Technical tools enable masking / modification of the IP address to another jurisdiction. Without any clarity, levy based on IP address may seem to cover cases which are clear externalities. For example, foreign tourist visiting India may visit a foreign e-commerce website to buy a product to be delivered to his residential address in home country.

IAMAI Suggestion

- Adequate guidance should be provided, clarifying the meaning and scope of the expressions 'digital or electronic facility', 'target', 'customer', 'resident of India' so that only the intended transactions are covered within the ambit of EL.

- EL should be levied only on the income component, i.e. commission / fee, being the consideration for facilitation and not on the gross merchandise value of the goods or services.
- Further, the challenges around Indian IP address also raises questions regarding whether the IP address requirement is sufficient, reliable and verifiable indicator of nexus in all cases. Therefore, it is important that a guidance, resolving these issues be also provided.
- Deferment of exemption to transactions that are subject to EL under section 10(50) of the Income-tax Act seems unintended. To correct this anomaly, provisions of section 10(50), may be suitably amended to align with the provisions of EL. Clarity should also be provided on the interplay of EL with Income-tax Act, in respect of transactions that may be overlapping, such as Fees for technical services and royalty, which may be amenable to both income tax and EL.

TAX EXEMPTION TO PROMOTE P2P LENDING

Issue at hand: Currently, the money earned through investing on peer-to-peer (P2P) lending platforms is taxed under income tax. As with every form of loan, lenders on P2P lending platforms receive repayment in EMIs. The interest income component of the EMI that is received by lenders gets added to the lenders total income and is taxable as per the income tax rules/ slabs applicable to the lender.

IAMAI Suggestion

- Interest earnings on P2P lending be deemed tax free. This will ensure greater inflow of required capital to MSMEs and allow P2P platforms to emerge as an alternative mechanism for funding.
- P2P lending to MSMEs be institutionalized and be made at par with tax free bonds to encourage channelizing investments in this sector.

TAXABILITY OF REIMBURSEMENTS OF SALARY AND OTHER COSTS IN RESPECT OF PERSONNEL SECONDED TO INDIA

Issue at hand: The Indian tax authorities often contend that reimbursement of salary cost disbursed to the personnel on behalf of the Indian entity to the overseas entity is in the nature of 'Fee for technical services' as per the provisions of section 9(1)(vii) of the Act and hence subject to withholding in India u/s 195.

Courts in India have also taken divergent views on taxability of such reimbursements leading to more ambiguity. The taxability of such salary costs poses an unnecessary tax burden on the foreign companies in India despite the fact that no income actually arises in hands of such foreign companies since the entire amount is passed on by the company to the seconded personnel. Further, tax is duly deducted at source in India on the salary income of the seconded personnel.

IAMAI Suggestion:

- IAMAI requests that a clarity may be provided on the tax treatment on account of secondment of expatriates. Further, it is recommended that the provisions of Section 9(1)(vii) of the Act be suitably modified to provide that in a case where: -
  - the complete costs of the deputed person are effectively borne by the Indian Company and the Indian company merely reimburses the salary cost to the foreign affiliate, and
  - Tax is duly paid in India on salary income of the seconded personnel the amount paid by the Indian company to the foreign affiliate towards such salary costs should not be treated as Fee for Technical Service. Accordingly, payment of such salary and other costs should also not attract Withholding tax provisions.

DISALLOWANCE OF EXPENDITURE IN CASE OF NON DEDUCTION OF TDS UNDER SECTION 40(A)

Issue at hand: The Finance Act, 2015 had brought an amendment in section 40(a)(ia) of the Act where in case TDS is not deducted on expenditure, such expenditure is disallowed to an extent of 30% while computing taxable income for the year.

This amendment was a beneficial amendment as it reduced the disallowance from 100% to 30%. The provision is however applicable only to a situation where the payment is made to resident assessee and has not been extended in respect of payment made to a non-resident.

This leads to a situation where disallowance of expenditure is forwarded to resident assessee upto 30% in case of non-deduction of TDS but 100% in case of non-resident assessee.

IAMAI Suggestion:

- In order to align sub section (i) and (ia) of Section 40(a), it is suggested that Section 40(a)(i) of the Act should be amended to provide 30% disallowance, instead of 100% disallowance for amount paid/payable to non-residents.

TDS ON YEAR END PROVISIONS ENTRIES IN BOOKS OF ACCOUNT

Issue at hand: Year-end provisions are made by taxpayers to follow accrual system of accounting. Very often provision for expenses at the year-end are made based on best estimates available with the taxpayer even if the supporting invoice is received subsequently.

This often leads to excess deduction and deposit of tax, disputes with the vendor and unnecessary burden casted on the payer in carrying extensive reconciliations.

IAMAI Suggestion

- Relief from deduction of tax at source should be given to the payee on payments that are accrued but are not due and represents only a provision made for reporting purpose that are reversed on the first day of the subsequent year.

- Relief should also be given from deduction of tax at source on payments for which the payees are not identifiable.

EXEMPTION FOR ESOPS

Issue at hand: ESOP taxation has been a long-lasting pain point for the start-up sector, and the Finance Minister correctly identified that taxing ESOPs as perquisites create cash flow problems for the employees who do not sell the shares immediately. However, the relief offered in the budget in the form of deferring tax payment by five years or till they leave the company or they sell it, whichever is earliest fails to do justice to the basic problem with ESOP taxation.

Employees joining new start-ups take great risk professionally on the expectation that the ESOPS they hold will compensate the risks they take at the time of selling the shares once the start-up is successful.

To avail the benefit of the deferred tax on ESOP the employer has to be (i) an eligible startup referred to in section 80-IAC of the Income-Tax Act i.e. should be incorporated on or after April 1, 2016; (2) it should be notified by the Department of Promotion of Industry and Internal Trade (DPIIT) as a start-up and (3) should be certified by the inter-ministerial board (IMB); and (4) the turnover does not exceed Rs 100 crore). Therefore a very limited small number of startups are eligible for the new ESOP tax regime.

IAMAI Suggestion

- The government must abolish tax on ESOPs for unlisted privately held small and medium sized enterprises at the point of exercise and Tax should be levied based on actual gain by the employee from the liquidation of ESOP. i.e. difference between the strike price and selling price at the point of sale.
- Abolish Salary tax on ESOP at the time of exercise of ESOP rights and prescribe ESOP to be taxed only once as Capital gains at the point of sale and not twice under salary and capital gains.
- The provision for relaxation of ESOP taxation should be offered to all start-ups and also extended to promoter under prescribed norms.

SECTION 72: CARRY FORWARD AND SET OFF OF BUSINESS LOSSES

Issue at hand: the break-even period for Startup companies is much longer and even exceeds 8-10 years in some cases. As per current provisions, losses can be carried forward only for 8 assessment years. Special consideration is required for start-ups and emerging businesses, especially during such times of crisis to allow them to offset their losses.

Expiry of Tax losses up to 8 Years are allowed for Health Insurance Company incurred in Initial years. Health insurance companies generally have longer gestation period to break even due to reserving requirement & investment in distribution and operations. This leads to expiration of tax losses due to the current tax laws of allowing the carry forward of losses only until 8 years from the respective years of incurred loss.

IAMAI Suggestion

- The present time limit of only 8 assessment years should be increased for start-up and new businesses to at least 12 years, so that companies can set off the eligible losses against income in the later years.
- Extension in time period for expiry of Tax losses from 8 years to 12 years for Health Insurance Companies be allowed as well.

SECTION 79: RESTRICTIONS ON CARRY FORWARD AND SET-OFF OF LOSSES

Issue at hand: The provisions of Section 79 of the Income tax Act 1961, restricts closely held companies from carrying forward and setting off losses in case shareholding varies by 49 percent or more in the year in which the loss is considered to be set off vis-a-vis the year in which the loss is incurred.

In the event of a business reorganization by which a holding company transfers the shares of its 100% subsidiary to another subsidiary, the first subsidiary will not be in a position to carry forward and set-off its losses (if any) as there is a 100% change in its shareholding. However, in such a situation, the holding company continues to hold 100% of the shares of the second subsidiary, which in turn holds 100% of the shares of the first subsidiary.

This provision needs to be separately viewed from Start-ups perspective where the shareholding pattern may be under change on higher frequency for the purpose of infusion of funds.

IAMAI Suggestion

- It is recommended that necessary clarification be provided by the Government to settle the ambiguity surrounding on this issue by providing that the restriction posed by section 79 of the Act will not apply to intra group reorganization where a holding company transfer shares of its subsidiary to another subsidiary since the ultimate (beneficial owner) remains the same.
- The carry forward period of losses for Start-ups should be considered to be increased separately as they are in the process of setting up and have huge losses in the early years. The benefits should be extended to all start-ups without any turnover limit (presently start-up eligibility is set at INR 25 Crores).

TIME LIMITATION FOR CLOSURE OF ADMINISTRATIVE RESPONSES (REMAND REPORT/ RECTIFICATION APPLICATION)

Issue at hand: Delays at ITBA or CPC results in indefinite delays in responses to rectification applications filed by businesses. The functionality of passing manual order is done away due to which the jurisdictional AO is not able to grant the pending tax refunds along with Interest. This leads to major challenges for businesses and leads to piling up on disputed tax claims that affect both the exchequer as well as the cash flows of businesses.

IAMAI Suggestion

- Define the time limit for the authorities for closure of applications filed by the assesses and stipulate time period within which the tax authorities have to release the refund amount.

HIGHER DEDUCTION LIMITS UNDER SECTION 80D

Issue at hand: Due to increase in the health care services and the ongoing COVID pandemic, customers today want to take higher medical covers from the insurers. At the same time, given the present levels of healthcare needs, there has been an increase in average premium being paid for health-related insurance policies.

In such a scenario, it is imperative that the tax deduction allowed under Section 80D be expanded to provide relief to the citizens of India and to promote better healthcare for the country.

IAMAI Suggestion

- Deduction of health insurance premium up to INR 1,00,000/- per Individual for self and dependent family including senior citizen parents.