SIAINDIA
Satcom Industry Association

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PRE-BUDGET MEMORANDUM 2023-2024

Reforms for the Commercial Space Sector

This document primarily captures the measures to boost Commercial Space Sector from a taxation and regulatory reforms perspective. We plan to provide our suggestions under the following heads:

A. Taxation

- Introduction of Production Linked Incentive scheme / Phased Manufacturing incentive plan in the space sector as a part of 'AtmaNirbhar' Bharat programme

- Introduction of Incentive regime for entities engaged in space sector
- Promotion of Research and Development in India
- Jurisdiction over Space Activities
- Telecommunication goods and services (Very Small Aperture Terminal (VSAT), its' parts, bandwidth service)
  - Rationalization of GST rates
  - Import clearance
  - SUC charges

- Rationalization of Tax deduction at Source (TDS) provisions
- Input tax credit Accumulation under Goods and Services Tax regime
- Accumulated losses under Income Tax
- Extending benefit of deductions for license fees and spectrum usage charges
- Additional depreciation
- Employment generation
- GST Exemption for Private Satellite Launch Service Providers
- Determining Place of supply for GST

A.1 Other Indirect tax recommendations

A.2 Other DT recommendations

B. Regulatory

- Who is the Regulator and What should the Regulator do?
- IN-Space
- Department of Telecommunications (DoT)
- Conclusions

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Background

In the wake of the Atma Nirbhar Bharat initiative, the draft Spacecom policy along with a spate of other policies concerning upstream and downstream space activities has, undoubtedly inspired rigor and confidence in the health of the commercial space economy in India. These policies were announced to address the need for a clear and predictable policy framework. However, as the Indian Government continues to refine the language of the said policies while also formulating the draft telecommunications bill, key takeaways forged in the experience of the space and telecommunications industry should play a role in defining the final language of the aforesaid policies and bills. The endeavor in this paper is to encapsulate inputs from the experience of investments and business in this sector in order to better aid the government in framing the final versions of its bills and policies (hereinafter collectively referred to as "regulations") so that the slated objective of ease of doing business in this sector is better enabled.

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A. Taxation

Category	Background and Issues	Recommendations	Rationale for recommendation
A. Introduction of Production Linked Incentive Scheme (PLI) / Phased Manufacturing Incentive plan (PMP) in the space sector as a part of 'AtmaNirbhar' Bharat programme	In India, the space sector was predominantly driven by the Department of Space (DoS)/Indian Space Research Organisation (ISRO) for decades. The space industry includes hundreds of private suppliers; however, the sector, due to its structure of governance, had a very insignificant role for private players till recently. With the path-breaking reforms to liberalise the space sector and enhance private sector contribution in line with the western economies, the government has called for working towards the development of futuristic technologies such as Artificial Intelligence (AI), robotics, Internet of Things (IoT), Big-data and Block-chain for the overall	The private space sector is presently catering to ISRO can be considered manufacturing stakeholders, who manufacture various components indigenously and contribute to the national scheme of 'Make In India.' In 2020, India accounts for merely 0.61% of the global exports in the Aircraft, Spacecraft & Parts segment, with export value of $1.03B. On the other hand, India's share in global imports in the same segment stands at 3.67%, with an import value of $5.7B. India needs to develop policies to create space manufacturing platforms which would keep pace with global advancements and effectively meet the	PLI will not only encourage domestic manufacturers but it will also attract foreign space companies to manufacture in India. Foreign companies can establish their presence by partnering with Indian startups in order to be a part of space ecosystem in India. Currently, India boasts of over 100 spacetech startups. In the year 2021 USD 68 million were invested for spacetech startups, with a y-o-y increase of 196 per cent.

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	development of the nation both for space and defence. The government's 'Make in India' and 'Atmanirbhar Bharat' policies aim at encouraging indigenous manufacturing and making India a manufacturing and export hub. India's space industry2 accounts for approximately 2.6% of the global space ecosystem in 2020. The industry is expected to garner close to $13 billion in 2025, compared to around $9.6 billion in 2020. The CAGR projected for different space segments in India for the next three years are as follows: • Satellite and launch services at 13% • Satellite manufacturing at 8.1% • Ground segment at 6.9% • Satellite services at 4.2%	enormous challenges driven by the transformation. Facilitating policies can combine existing technologies in a more prolific manner and lead to the development of state-of-the-art applications and enhance the indigenous manufacturing capacity in a more cost-effective manner and with better commercial traction. In view of this, the association would like to recommend Introduction of PLI / PMP scheme for the Space sector. Thus, making India a developed Space Sector ecosystem and an export hub. The satellite manufacturing opportunity in India is huge and foreign companies are looking to reap the benefits of satellite manufacturing services in India. Satellite manufacturers are well-positioned to capitalize on the growing demand for the	

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		development of LEO (Low Earth Orbit) satellite constellations, communications equipment and satellite bus system. The government can assist the companies in providing Production Linked Incentive in the following areas: • Critical Payloads • Testing Facilities • Space Parks	
B. Introduction of incentive regime for entities engaged in space sector	As per OECD paper on Space Economy for People, Planet and Prosperity[1], several government initiatives are targeting downstream business and application development. Increasing number of companies and start-ups are focusing on developing satellites, rockets, rocket fuel, and propulsion systems and are also developing analytical skills to	i. Historically, tax holiday was granted for various industries under Part C of Chapter VI-A of the Act. While most of the incentives are discontinued, some incentives are provided to entities such as start-ups in the form of tax holiday under section 80-IAC of the Income-tax Act, 1961 ('Act'), Further, new manufacturing companies are also entitled for benefit of	Extending incentive or tax holiday under the provisions of the Act, Customs and GST law would help to initiate the development of space industry and would provide them a competitive platform to thrive.

[1] OECD paper for the G2 Space Economy Leaders' Meeting, 20 -21 September 2021

	generate insights across industries and developing innovative applications. Until recent past, the space industry in India was largely under the purview of the government, with limited private participation. Given the advancement in technologies, proliferation of data, and the onset of the platform economy, there is a need for greater private participation to further drive the commercialization. The space sector has the significant potential for growth and can act as a catalyst in attracting new investments, increase employment for skilled workforce, facilitate and supplement Make in India initiative. In order to develop the entire space ecosystem (such as design and manufacturing of satellites and payloads, launch vehicles and launch services, ground and space segments, space communications, satellite communication, space-based	lower corporate tax rate of 15% under section 115BAB of the Act. In order to attract new and existing players to invest and develop the entire ecosystem relating to space sector similar incentive or tax holiday, in compliance with World Trade Organization requirements, should also be extended to companies engaged in space sector. ii. Space Tech parks / existing manufacturing setups should be given the status of a deemed Special Economic Zone (SEZ) so as to extend the customs duty and Goods and Services Tax (GST) benefits of a SEZ to the space units / startups. Specific guidelines and the necessary compliance should also be provided in the proposed The Development of Enterprises and Services Hub Bill, 2022 (DESH Bill).	

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	services, spectrum management and operations, space applications, navigation applications and navigation equipment design and supply) and to promote entities to invest in this sector and, it is essential if additional support can be provided to such entities.		
C. Promotion of Research and Development in India	Research and Development (R&D) are the need of the hour for both space and defence sectors in India. The country needs extensive fund allocation for education and research and development (R&D) as it is way behind its contemporaries. A stark example, Israel provided 5% of its GDP for R&D; South Korea (4.8 %), whereas India spent only	It is recommended to: **i.** Provide weighted deduction under section 35 of the Act for any expenditure on scientific research for any expenditure, not being in the nature of capital expenditure, on scientific research related to the	In order to (a) develop the ecosystem for Design, Development and Manufacturing in India, (b) promote research and development

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	0.7% on R&D. Space industry is a deep-technology industry having long gestation period before they start earning revenues. They incur significant R&D expenses in the initial years before they start earning revenue. Presently, under section 35 of the Act, only 100% of expense is allowed as a deduction i.e. no weighted deduction is allowed. Further, there was a concessional GST rate (5%) for procurement of scientific and technical equipment supplied to a public funded research institution, departments and laboratories of central and state government. The said concession has been rescinded vide Notification number 11/2022 Central Tax – (Rate) dated 13 July 2022 and GST at the rate 18% is levied on procurement of equipment. The	business. **ii.** Concessional rate of GST and customs duty should be notified for the expenses incurred by the businesses on research and development. The said exemption can be provided in line with the IGCR (Import of Goods at Concessional Rate of Duty) benefits provided to manufacturers who can import specified goods at concessional rates subject to fulfilment of prescribed conditions. In the said case, verification whether the equipments are used for space research can be undertaken basis the end use certificate issued by ISRO / Satellite Division. **iii.** Inclusion of Space based projects focused on research and development in the Project Import Scheme with	and (c) incentivize private players to undertake research and development, it is essential if additional support can be provided by the government to entities engaged in research and development in India in the form of weighted deduction, concessional duties and exemptions.

	GST which is charged on such procurement of equipment may become a cost to ISRO or any other private organization since the outward activities of ISRO/private organization is proposed to be exempted.	Concessional rate of duties would help drive research and development in the given sector.	
D. Jurisdiction of States over Space Activities Generally	Under Article VI of the Outer Space Treaty, a state bears international responsibility for national activities in outer space. Furthermore, under Article VIII, a state party in whose registry, an object in space, is carried, shall retain jurisdiction control and jurisdiction over such object. However, under Article II of the said treaty, space is treated as a global common and cannot be appropriate by any state. This creates a unique challenge for the purposes ascertaining jurisdiction to tax objects in space or activities originating in space, for the following reasons,	It is recommended to align the taxability with Outer Space Treaty 1967, the prevalent tax treaties and section 2(25A) of the Act. Appropriate clarifications to be issued for income of satellite operations to not fall within the purview of 'business connection' as defined under Explanation 2 to section 9(1)(i) of the Act.	It is imperative to provide tax certainty to foreign players in order to attract investment in this sector and also reduce cost of services for Indian space industry players It is imperative that the question of jurisdiction to tax is specifically laid down in taxing statutes as activities that are otherwise outside the jurisdiction of India, could, for purposes of national security be treated as falling within India's jurisdiction in other legislations. Having a specific policy towards jurisdiction to tax within the tax enactments itself will avoid different

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	a. Since space is a global common, under existing domestic and international tax law, determining the residence of a satellite or a space activity is challenging. The most likely school of thought that will prevail is that a taxable event, if originating in outer space, will, for the purposes of Indian law, be treated as a form of import of services. b. The view against national jurisdiction to levy direct taxes on satellite based services unless such satellite is registered in the nation's registry, was upheld in Asia Satellite Communications Co. Ltd. v. DIT[2] and in the case of Communications Satellite Corporation v. Franchise Tax Board[3]. However, it is relevant to note that these judgements were rendered on the basis		government regulators taking contrary views on India's jurisdiction to tax or regulate a specific space activity.

[2] [2011] 332 ITR 340 (Del)
[3] 156 Cal. App. 3d 726 203 Cal. Rptr. 770 (Cal. App. 1st Dist. 1984)

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	that, save for satellite assets servicing customers in the taxing nation's territory, no earth equipment or ground station existed within the limits of such nation's territory. c. Consequently, by extrapolation of the principles of the Outer Space Treaty, a state which has authorised and registered an object in space, will retain the jurisdiction to tax the same. For nations in whose territories such foreign satellites offer services, the ability to tax the earnings of such foreign satellites for purposes of direct taxation will be severely limited, if not altogether impermissible in view of Article VIII of the Outer Space Treaty. There is a need to thus harmonise the principles contained in Article VI and VIII of the Outer Space Treaty with any policy concerning the jurisdiction to levy taxes on satellite		

	based businesses. d. Particularly in the context of low earth orbit, there is precedent to suggest that some satellites with perigee as low as 80 kilometres altitude, which is still below the Karman line limit of 100 kilometres that separates air space and outer space . While outer space is a global common, air space can either be international or domestic. For satellites that enter into and exit airspace and outer-space, the question of which nation exercise the right to levy taxes can become contentious. Domestic tax policies must provide for whether or not the view supported by space law will determine jurisdiction to tax or the view provided by aerospace law, by factoring in the following,		

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	i. Whether the object at the centre of this question is registered as a space object as per the Registration convention or not? ii. Whether the said object is registered and licensed in accordance with ITU regulations and if yes, the specific regulatory clearances granted? e. However, for purposes of indirect taxation, the position under Indian law is different, particularly with the coming into force of the Goods and Services Tax regime. Since the place of supply of services is determined based on the place of the recipient of services , though a satellite located in space is technically outside the territory of India, by virtue of the recipient of such services being located in India, services rendered by such satellites is likely to be treated as import of services and thus liable to GST.		

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	Alternatively, the point of supply may be inferred from the footprint of the satellite, as was held in the case of Vodacom Nigeria v FIRS . f. However, unlike direct tax which is the subject matter of Double Taxation Avoidance Agreements and OECD Model Tax Convention on Income and on Capital, indirect tax such as VAT is not the subject matter of harmonised international treaties. This can raise concerns regarding nations with overlapping jurisdictions subjecting the same satellite based services or the same taxable event to tax twice. Though, for example under Dutch and Nigerian laws, export of services is exempted from VAT, still ensuring a harmonised approach across nations for the purposes of levying VAT or GST on satellite based services is needed. However pending the same,		

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	there is a need to formulate policies for indirect taxation vis-à-vis space activities in order to avoid any such international double taxation and which can also serve as a starting point to develop international treaties that can address this problem specifically.		
E. Telecommunication goods and services (Very Small Aperture Terminal (VSAT), its' parts, bandwidth service) — **Rationalization of GST rates** — **Import clearance** — **SUC charges**	— **Rationalization of GST Rates:** Before the introduction of Goods and Services Tax Act, the telecommunications goods i.e. VSAT and its Parts were taxed @ 5.5% under VAT Act. Even the Bandwidth Services were taxed @ 15% under Service Tax Act. However, with the introduction of GST w.e.f. 01st July, 2017, both the said goods and services got taxed at a higher rate i.e. 18% • **Import clearance:**	It is recommended that the tax rate in GST, which is 18% currently, shall be revisited and rationalise to brought down to a lower rate of 12%.	The recommendation is made so as to bring the present GST rates at Par to the tax rates prevailing in pre GST era and remove the extra burden of taxes from the industry so as to strengthen them more.

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	Presently, importing parts of VSAT is done under notification 25/2005 – Customs dated 1 March 2005. In certain cases, custom officials insist on Equipment Type Approval (ETA) and import license. This requires multiple justifications since it is the parts which are which are imported. Thus, import of VSAT parts becomes a time consuming and leads to delay in shipment clearance. • **SUC charges:** VSAT is a very potent medium for the Government to achieve the rural affordable connectivity bridging the digital divide. The high space segment costs, SACFA charges of Rs. 1000 per VSAT and the revenue share of 8% towards license fees and 4% towards SUC charges has increased the cost burden on the rural customers.	It is Recommended that VSAT operators should be allowed to clear the parts of VSAT under approved category which does not require any ETA or import license. It is recommended that the current levy of 4% of SUC charges is very high and needs to be reduced to a minimum charge of 1% of AGR.	This will lead to execute a faster clearance so that customer orders can be catered timely. Reduction in SUC charges will help the VSAT industry to achieve the rural affordable connectivity bridging the digital divide.

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F. Rationalization of TDS provisions	In order to promote ease of doing business, helping industry players manage working capital is one of the key factors. At the same time, promoting ease of doing business is critical for investments to flow in the space domain. The overall attractiveness of the sector has to improve for greater private participation. Presently, payments falling under the purview of royalty on account of transmission by satellite for up-linking or down-linking of any signal is subject to withholding tax at 10% under section 194J of the Act.	It is recommended that TDS on payments across the entire value chain may be rationalized to 2%. Further, there shall be no tax leakage since the recipients will offer income to tax and pay corresponding advance tax on periodic basis.	As companies in space sector are deep-technology companies with long gestation period, blockage of cash on account of TDS may impact operations. Hence, in order, to ensure that these companies have smooth flow of working capital funds, it is recommended to rationalize the TDS rate to as low as 2%.
G. GST Credit Accumulation	Space Industry, as any deep-tech vertical,	Accumulated GST credit can be unblocked	The Space sector is an industry where the

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	involves years of research and development to prove technology before actual sales are generated. Further, there is a likelihood of GST being applicable on the spectrum and the license fees under reverse charge mechanism. Thus, it is likely that a hefty GST input credit accumulation may happen in the initial years.	by way of following: i. Conversion of accumulated credit to tradable scrips ii. Allow cross utilization of CGST credit between distinct person. iii. Grouping of multiple registrations within group entities for Input tax credit utilization for CGST. iv. Payment of GST under reverse charge mechanism using ITC.	revenue generation is a time-consuming affair, thus, a rebate or unblocking of GST credit is very critical for liquidation of working capital.
H. Accumulated losses	Companies in space sector have long gestation period. At initial stage, companies may incur significant losses which can lapse. Section 72 of the Act allows carry forward of tax business losses for eight assessment years to be set off against the business income.	It is recommended that companies in space sector are allowed to carry forward the business losses for more than eight assessment years, say twelve years.	Increasing the timeframe to carry forward tax business loss would ensure that the expenses incurred in the initial phase of product or service development does not lapse and the taxpayers can set-off past losses against future profits.

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I. Extending benefit of deductions for license fees and spectrum usage charges	Presently, the provisions of the Act specifically provide for deduction of license fees and spectrum usage charges for telecommunication services. However, there is no specific provision under the provisions of the Act to provide for deduction for the license and for right to use spectrum specifically for companies in space sector.	Section 35ABA of the Act deals with expenditure for obtaining right to use spectrum for telecommunication services being in the nature of capital expenditure, incurred for acquiring any right to use spectrum for telecommunication services either before the commencement of the business or thereafter shall be allowed a deduction of such expenditure. Section 35ABB of the Act deals with expenditure for obtaining licence to operate telecommunication services being in the nature of capital expenditure, incurred for acquiring any right to operate telecommunication services either before the commencement of the business to operate telecommunication services or thereafter shall be allowed a deduction of such expenditure.It is recommended to expand the provisions of section 35ABA and 35ABB of the Act to explicitly allow a deduction for license fees and spectrum	This recommendation would help to avoid future litigation and controversy revolving around deduction for license fees and spectrum usage charges paid by space industry players.

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		usage charges paid by space industry players to provide them clarity and certainty.	
J. Additional depreciation	Space industry players wanting to have dedicated capacity may want to own and operate satellites or requisite capital assets for developing new products or testing their products or services. In order to facilitate and enable such players to make such capital investments and also to promote domestic satellite manufacturing, incentives can be provided for entities to purchase satellites or requisite capital assets. Presently, under section 32(1)(iia) of the Act, in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31 March 2005 by an entity engaged in the business of manufacture	It is recommended that the entities acquiring plant and machinery for any aspect relating to space industry may be extended benefit of additional depreciation of 20% under section 32(1)(iia) of the Act in order to enable and incentivize such companies to acquire or invest in capital assets or newer technologies.	The benefit of additional depreciation would encourage players to make or increase their capital investments in this sector and to enable them to deploy newer technologies.

	or production of any article or thing or in the business of generation, transmission or distribution of power are allowed an additional depreciation of twenty per cent of the actual cost of such machinery or plant. However, the eligibility to claim this deduction is restricted to specified categories of taxpayers.		
K. Employment generation	As per OECD paper on Space Economy for People, Planet and Prosperity[4], space sector requires highly skilled workforce. In order to facilitate the creation of an entire space ecosystem, it is essential to have necessary skilled manpower to drive and sustain R&D, introduce innovative solutions etc. Hence it is imperative to enable companies to attract talent, incentivize may be given to	As per section 80JJAA of the Act, a taxpayer is allowed deduction of an amount equal to thirty per cent (per year) of cost of additional employee incurred during the financial year, for three years. It is recommended to introduce incentives for employment generation for space industry players. An incentive regime similar to section 80JJAA of the Act with significantly enhanced limits per month	Deduction similar to section 80JJAA of the Act would help to incentivize the space sector for generating employment opportunities for skilled workforce.

[4] OECD paper for the G2 Space Economy Leaders' Meeting, 20 -21 September 2021

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	employers to not only increase fresh employment but also facilitate in retaining skilled talent in India. Presently, the provisions of section 80JJAA of the Act promote generation of employment opportunities. However, this is restricted to unskilled or semi-skilled workforce since the salary cap of Rs 25,000 per month is not adequate for skilled workforce.	should be considered.	
L. GST Exemption for Private Satellite Launch Service Providers	Satellite launch services supplies by Indian Space Research Organization (ISRO), Antrix Corporation Limited (ACL) or New Space India Limited (NSIL) is exempt from GST vide entry 19C of Notification Number 12/2017 – Central Tax (Rate) dated 28 June 2017. However, at present such an exemption is provided only to the government organizations. With the intent of the	GST exemption for provision of satellite launch services must be provided to all the parties who are in the process of providing such services. This would result into creation of a level playing ground for the entire industry. Further, we recommend that an explanation should be added in the definition of exempt services wherein services in relation to satellite launch services should be excluded for the	To provide a level playing ground for all the players (private and public companies) for providing space launch services.

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	Government to allow satellite launch services to be provided by private players, there is a need to provide similar exemption to private players as well, in order to provide a level-playing field.	purpose of credit reversal.	
M. Determining point of supply for GST:	Presently, the provisions of GST law has specific provision to determine the place of supply in relation to the internet connectivity services. The taxability is determined by the location where the leased lines or circuits lines are located. However, there is no specific provision with respect to determination of place of supply for provision of internet connectivity services via Satellite to Indian recipient. Thus, in view of the above, a specific provision to determine the Place of supply for internet connectivity services provided through satellite must be prescribed or a	In terms of IGST law, the place of supply for the telecommunication and internet services in case where the services are provided by fixed telecommunication line will be the place where such telecommunication line is installed. Since the aforementioned services are provided by satellite, it is not possible to determine the location from where such services are provided and accordingly, the place of supply for such services must be determined basis the location of recipient of services. We recommend to provide necessary clarification in this regard, in	Internet connectivity through satellite is not yet operational in India and is likely to be implemented shortly. In view of this, appropriate clarification on the taxability aspects of internet connectivity services would help the businesses have certainty and clarity.

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	clarification be issued that the place of supply in such case would be the location of the service recipient.	order to avoid any ambiguity in future	
A.1 Other GST Recommendations			
• **ITC Reversal in case of Mergers and Acquisitions**	Mergers and Acquisitions (M&A) have increased over the years as companies look at synergizing in a dynamic economic environment. Under GST, since services by way of business transfer of a going concern is exempt, ITC is not available in respect of goods and services procured for such business transfer like consultation and legal service, due diligence services, etc.	It is recommended that necessary amendments be made for eligibility of ITC and non-reversal of common credit in case of business transfer arrangement.	There is an ambiguity as to whether the consideration received for business transfer should form part of exempt turnover for calculating ITC reversals. Such inclusion results in an absurd situation where a huge amount of ITC will become a cost for the Company. The intention of the legislature may be different.

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• **Allow refund of GST claimed on capital goods to exporters supplying under Letter of Undertaking ("LuT")**	While exporters can claim refund of accumulated ITC of GST paid on input & input services, GST paid on capital goods is not allowed to be claimed as a refund as per Rule 89(4). Further, the exporter who opts for payment of IGST on zero-rated supply can utilize ITC of GST paid on capital goods. This brings disparity between the exporters opting for the LUT scheme and the exporters opting for payment of GST. Service exporters cannot utilize the available ITC on capital goods since most of their output is zero-rated. This impacts the working capital requirements of the exporters.	It is recommended that GST paid on procurement of capital goods should also be allowed as a refund for export of goods or services under LUT.	GST Council considered the proposal to provide refund of capital goods for exporters with aggregate turnover up to 30 crores in the 39th Meeting held on 14 March 2020. The item was discussed to improve India's ranking in the 'Paying Taxes' category of World Bank's 'Ease of Doing Business index, where India has been scoring 'NIL' without any provision to allow cash refund of ITC on Capital Goods. Then, it was estimated that the said proposal would result in an additional outflow of INR 15,000 Crores for a jump of 7 ranks. Considering the Government's financial situation at that point in time, the said proposal was not agreed. Allowing refund of capital goods for exporters under LUT would also improve the World Bank's ease of doing

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			business rankings.
• **GST ITC eligibility on construction/renovation of immovable property which is used for business purposes**	As per Section 17(5)(c) and (d) of CGST Act, ITC shall not be available on: • Works contract services in respect of immovable property except where it is an input service for further supply of works contract service; or • Goods or services used for the construction of an immovable property on his account, including when such goods and services are used in the course of furtherance of business. Further, ITC is restricted in case of works contract services only to the extent	It is recommended that Section 17(5)(c) and (d) of CGST Act should be omitted with retrospective effect.	Allowing ITC where building is used in the course or furtherance of business (i.e., generating income liable to GST), such as renting, will keep the tax chain intact and serve the purposes of equity. Additionally, it is an indisputable fact that immovable properties such as factory sheds, machine foundation, office premises, residential quarters, etc., are an integral part of business and have a direct nexus with the functioning of the business. While credit may not be allowable if the immovable properties are intended for personal or non-business purposes, there appears to be no justification for disallowing credit on the construction/renovation of the

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	expenses are capitalized, as per accounting standard renovation of building such as office interior works are capitalized along with the building, and therefore, such credits are disallowed. Denial of ITC when used for construction/renovation works of immovable property on own account, although the same is used in the course or furtherance of business, is against the philosophy of the GST law, which is aimed at reducing the cascading effect of taxes.		immovable property exclusively for business purposes. Also, there have been advance rulings wherein it has been observed that leasing of land for the construction of an immovable property (such as hotels, commercial establishments, and warehouses) is also regarded as services for construction and restriction under Section 17(5)(c) of CGST Act is made applicable on GST paid on leasing of land. Hence, there is a need to omit the provision of Section 17(5)(c) and (d) of CGST Act to allow ITC for construction/renovation of immovable property where such immovable property is intended to be used in the course or furtherance of business.

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• **Tax levy on secondment arrangements**	It is a common practice in various sectors to provide/ receive employees under secondment programs. These arrangements are treated as employment arrangements under Income tax and other allied laws. Further, courts and tribunals under service tax law have also historically affirmed no tax position. However, a recent Supreme Court, in the case of Northern Operating Systems Private Limited, confirmed the levy of service tax treating the secondment arrangements as the supply of manpower service based on a particular set of facts.	It is recommended that an explanation be inserted in Schedule III of CGST Act that the employer-employee relationship shall be determined basis the provisions of the Income Tax Act. Alternatively, Government could consider the following: • Issue a circular clarifying its position and waive all past-period dues. • Suppose waiver of tax dues is not possible. In that case, clarification should be issued that any GST paid for any past period shall be eligible as credit for utilization or allowed as a refund. • Further, no interest and penal proceedings shall be pursued in this matter.	This ruling is likely to have implications under service tax and GST as well as recovery of past period taxes (along with interest and penalty) and could impact various sectors from a tax cost and compliance standpoint. There is, therefore, a need for clarifying secondment-related arrangements under service tax and GST standpoint.

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		• Also, clarification should be issued that the transaction value for tax payment shall be restricted to the value of actual reimbursements made by the Indian Company to the overseas Company. Further, for demands under the service tax regime, Government could consider issuing a Notification under section 83 of the Finance Act, 1994. Read with section 11C of the Central Excise Act,1944.	
• **Inbound ocean freight in case of import of goods on CIF imports**	Hon'ble Supreme Court, in the case of M/s Mohit Minerals Pvt Ltd, has held that no IGST under RCM is applicable on ocean freight in case of CIF imports (where the location of supplier and person paying freight is outside India) since the same violates the principles of composite supply.	It is recommended that the inbound ocean freight should be outside the ambit of GST, similar to global practice. If the above is not possible, the IGST reverse charge notification entry should be deleted. Also, refund of tax paid before the	Considering the judicial precedent, it is ideal that inbound ocean freight should be kept outside GST as the services are rendered beyond the territorial jurisdiction of India.

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	Globally, major maritime jurisdictions, such as Canada, Singapore, Australia, etc., have zero-rated tax treatment for inbound ocean freight.	Supreme Court ruling is to be granted to the taxpayer without considering the time limit under section 54.	
• **Supply of services by office in India to its another office outside India**	Supply of services by office in India to its another office outside India is not treated as exports (since they are treated as the establishment of distinct persons). Exemption is available in case POS is outside India; however, ITC becomes cost.	It is recommended that export benefits must be granted for such transactions.	Since the remittance for such services is also aiding in increasing the forex reserves of India, the said transaction could be treated as export of service.
A.2 Other Income-tax Recommendations			
• **Outbound Merger - Section 47 of the Act**	Companies Act 2013 permits merger of Indian company into a foreign company, subject to certain conditions. Merger of an Indian company into another Indian company is tax neutral if the prescribed conditions are satisfied. However, there	It is recommended to provide for tax exemption on merger of an Indian company into a foreign company by way of a specific clause in section 47 of the Act.	This would encourage outbound mergers.

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	is no specific exemption provided for merger of an Indian company into a foreign company.		
• **Rationalization of Slump sale provisions – Sections 47 and Section 50B of the Act**	Slump sale in a unique concept wherein assets and liabilities of an undertaking are transferred in exchange for lump-sum consideration. The intra-group tax neutrality has been provided to demerger, however, the same has not been provided to slump sale.	As in the case of a tax compliant intra-group merger (under section 2(19AA) read with section 47(xiii) of the Act), it is recommended to also provide tax neutrality to intragroup slump sale of undertaking under section 47 of the Act, provided such undertaking is not subsequently disposed-off within a period of 3 years from the year of transfer.	
• **Section 50CA and section 56(2)(x)**	Transactions between group companies for realignment of shareholding is not given specific exemption from provisions of sections 50CA and section 56(2)(x) of the Act. Further, section 56(2)(x) of the Act	A specific exclusions should be carved out in section 50CA and section 56(2)(x) of the Act for intra group share transactions. Further, it is recommended to specifically carve out slump sale from the provisions of section 56(2)(x) of the Act, in line with	Companies forming part of the same group need to enter into transactions for realignment of shareholding due to various reasons such as synergies of business, consolidation of shareholding etc and therefore such carve-out is essential.

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	specifically puts transfers on account of corporate reorganisation pursuant amalgamation and demerger outside the ambit of the applicability of section 56(2)(x) of the Act. However, there is no specific carve out provided for slump sale transaction.	exemption provided for other forms of re-organisation viz., amalgamation and demerger.	
• **Clarification on the applicability of section 56(2)(x) on the fresh issuance of shares – Rules relating to section 56(2)(x)**	The CBDT had issued 3 circulars on the applicability of section 56(2)(viia) [now 56(2)(x)] for deeming income in the hands of shareholders on the fresh issuance of shares. The first circular no. 10 of 2018 dated 31.12.2018 clarified that the intent of section 56(2)(viia) is to apply only on the transfer of shares. The clarification from board was necessitated as the tax authorities were applying section	It becomes important that an appropriate clarification is issued in the forthcoming budget that erstwhile sections 56(2)(viia) and present 56(2)(x) is not applicable to the fresh issuance of shares and applies only on the transfer of shares. Hence, it is recommended that the contents of Circular No. 10 of 2018 should be incorporated in the Act by way of necessary amendment/ clarification.	The intent of section is anti-abuse whereas the income tax authorities are applying the same mechanically in all the genuine and commercial transactions like in cases of rights issue where in the shares are issued to all the shareholders at a discount and also in cases where the issue remains unsubscribed and promoters take up the unsubscribed portion for ensuring the adequate capital infusion in the issuing company. These are genuine commercial transactions which ensure that the issuing company

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	56(2)(viia) on the fresh issuance of shares, including rights issue. However, the said circular was withdrawn vide Circular no. 2 of 2019 dated 04th January, 2019 on the ground that the matter is 'sub judice' and fresh comprehensive circular will be issued in due course of time. But the subsequent circular no. 3 of 2019 had only reversed the first circular no. 10 of 2018 by stating that exempting fresh issuance of shares from the applicability of section 56(2)(viia) would not be a correct approach, as it could lead to tax abuse. Issuing a circular and withdrawing it in quick succession has created significant uncertainty for the industry at large.		receives the adequate capital infusion for carrying out its business or other general corporate purposes such as capex for facility expansion etc., and hence, the same should not be considered as case of disproportionate allotment and thus kept out of the purview of anti-abuse provision of section 56(2)(x) of the Act.

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• **Contingent Consideration – Section 45 read with section 48 of the Act**	India is considered to be an attractive market by international investors. With a focus on balancing profitable exits and correct valuations, most private equity players are increasingly introducing a combination of clauses in the shareholders agreement, including consideration payable in a contingent manner based on certain performance milestones being achieved by the promoters. There is no clarity on whether such contingent consideration is to be taxed in the year of transfer or in the year of receipt once the consideration crystallises.	It may be clarified by way of an explanation or clarificatory provision to section 45 and section 48 of the Act, that in case of contingent consideration, the contingent portion should be chargeable to tax as capital gains only in the year in which the same is crystalised, irrespective of the year in which the transfer takes place (in line with the accrual concept – section 5 of the Act).	

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• **Extension of the sunset clause for Sections 194LC and 194LD – Sections 194LC and 194LD**	The concessional tax rate regime provided under section 194LC and section 194LD has significantly contributed in providing a viable and attractive avenue for raising funds by Indian businesses thus helping India to maintain the momentum in economic growth over the years. Both these sections have a sunset period of 1 July 2023.	It may therefore be considered to further extend the sunset period for the said concessional tax regimes.	This would support the vision to make India an attractive investment for debt market.
• **Central Govt's approval on lower rate of interest on long term bonds including infrastructure bonds issued between 1 July 2017 to 1 July 2023 - Rules relating to section 194LC**	Section 194LC of the Act provides for lower withholding tax rate of 5% on interest payments in respect of monies borrowed by an Indian company in foreign currency from a source outside India by way of issuance of long term bonds including infrastructure bonds issued after 1st October, 2014 but before 1st July, 2023 as approved by the Central	It is recommended to issue a circular conveying the Central government approval to all the long term bonds including long term infrastructure bonds for original maturity term of three years or more issued in compliance with the specified Foreign Exchange Management Regulations on or after 01st October, 2014 upto 01st July, 2023.	In the absence of CBDT circular, the tax officers can deny the benefit of lower withholding tax rate specified under section 194LC of the Act and raise demands on the Indian companies paying interest to foreign lenders, thereby causing genuine hardship.

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	Government in this behalf. In order to mitigate the hardship and compliance burden on borrower/issuer of bonds for taking approval in each and every specific case, the Central Board of Direct Taxes (CBDT) issued circular no 15/2014 dated 17th October, 2014 conveying approval of Central Government to all long term bonds including long-term infrastructure bonds for original maturity period of 3 years of more issued on or after 1st October, 2014 to 1st July, 2017 in compliance with the specified Foreign Exchange Management Regulations. However, even after time to time amendments in section 194LC of the Act,		

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	CBDT has not issued relevant clarification for conveying the approval of Central Government for issue of all long-terms bonds including long-term infrastructure bonds on or after 1st July, 2017 up-to 1st July, 2020 and upto 1st July, 2023 thereafter similar to clarification issued for corresponding previous period from 1st October, 2014 to 1st July, 2017.		
• **Applicability of buy-back tax in case of redemption of preference shares and capital reduction – Section 115QA of the Act**	Section 115QA of the Act provides that a company purchasing its own shares is required to pay buy back tax. Transactions such as cancellation of shares pursuant to capital reduction/redemption of preference shares though not treated as purchase of its own shares under the Companies Act, 2013, on a plain reading of the Act,	It is recommended that transfer of shares to the company which are not effectively buy-back of shares via a scheme of capital reduction or redemption of preference share should be carved out from applicability of section 115QA of the Act.	Capital reduction/redemption of preference shares should not be viewed as buy back under the Act and has to be subject to taxation under regular provisions.

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	unintendedly these are getting covered under section 115QA of the Act.		
• **TDS compliance in the hands of non-residents – Section 204**	*Vide* amendment to section 204 of the Act, a non-resident is required to comply with TDS provisions upon payments made to resident vendors. While the said amendment was intended to cover TDS compliance under section 194-O of the Act by non-resident e-commerce operators, in the absence of a specific mention of section 204, it appears to have casted the TDS obligation on all the non-residents.	A clarification can be issued that section 204 of the Act should not apply to all the non-residents and only certain transactions can be covered by way of a list.	Such proposed clarification will ease the TDS compliance burden of non-residents.
• **Clarity on furnishing of the income-tax return for non-residents – Section 115A**	The tax return filing exemption is available to non-resident taxpayers deriving income in the form of dividend,	Provide exemption where applicable taxes are deducted under Treaty where beneficial Treaty rate is applied.	Such proposed clarification will ease the return filing burden of non-residents.

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	interest, royalty and fees for technical services as referred to sections 115A(1)(a) and 115A(1)(b) of the Act and if taxes are deducted under section 115A of the Act. However, in a scenario where tax rate under Treaty is less than the rate under the Act, the same may not be available.		
• **No Form 3CEB filing for taxpayers exempt from filing income-tax return – Section 92E**	A non- resident assessee is not required to file income tax return if it is assessable to tax in India for dividend, interest, royalty or fee for technical services, and the taxes have been appropriately withheld from such income. A question arises about the assessee's obligation for filing Form 3CEB under section 92E of the Act. Section 92E has not been amended consequent to the above exemption. Non-	It is recommended that section 92E be amended to provide exemption to non-resident assessees from filing Form 3CEB, where they are exempted from filing tax return in India.	Such proposed clarification will ease the compliance burden of non-residents.

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	reporting of international transaction in Form 3CEB attracts multiple penalties under various provisions. So, a situation arises where a non-resident need not file a tax return in India but would still need to file Form 3CEB to avoid any penalty for non-reporting of the international transaction.		
• **Amendment in Form 3CEB for reporting of issue and subscription of equity shares – Form 3CEB**	The CBDT issued Instruction No. 2/2015, on 29.01.2015. As per this Instruction, the CBDT, based on a decision of the Bombay High Court in the case of Vodafone India Service Private Limited [TS-308-HC2014(BOM)-TP-Vodafone India Services] stated that the premium arising on issue of shares is a capital account transaction and does not give rise to income and would hence not liable to transfer pricing adjustment.	It is recommended that Form 3CEB be appropriately amended.	This will bring Form 3CEB in line with the CBDT instruction No. 2/ 2015.

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	Clause 16 of Form 3CEB still requires reporting of transaction of equity shares as under: “international transactions of purchase or sale of marketable securities, issue and buyback of equity shares, optionally convertible/ partially convertible/ compulsorily convertible debentures/preference shares” In view of the specific reporting requirement in clause 16, the assessees are bound to report issue of shares transaction as international transaction even after the CBDT instruction No. 2/2015		

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• **Tax deduction at source on purchase of goods - Fresh issuance of shares and securities – Rules relating to section 194Q**	W.e.f. 01-07-2021, TDS obligation has been introduced on buyers at the time of purchase of goods. Circular issued by CBDT has clarified the intent of including shares and securities within ambit of 'goods' and TDS required to be deducted on purchase of shares and securities except transactions that happened over stock exchanges. However, there is no explicit clarity regarding applicability of TDS on subscribing shares or securities at the time of fresh issuance by companies	It is recommended if CBDT can clarify the position regarding non applicability of TDS provision under section 194Q at the time of fresh issuance of shares or securities.	Fresh issuance of shares & securities is not considered sale in the hands of issuer company as there is no existing property or goods in place at the time of issuance of shares/securities. Considering that a transaction which is not considered sale, the said transaction cannot be considered to be 'purchase' in the hands of subscriber and accordingly TDS provisions should not be applicable. Further, considering that it is settled law that shares and securities cannot be considered to be 'goods' or 'property' before the allotment, TDS provisions cannot apply on fresh issuance of shares.
• **TDS on benefit or perquisite in respect of business or profession –**	The memorandum to Finance Act, 2022 had indicated that the intention for	We humbly request the Government to withdraw the circular and retain the scope	The circular has widened the scope of Section 194R much beyond the scope of

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Rules relating to section 194R **a) Clarity on scope of section 194R** • **b) Whether promotional free goods/services amount to benefits/perquisites?**	introduction of section 194R is to deduct tax on the benefits or perquisites taxable under section 28(iv) of the Act. Accordingly, section 194R should apply to non-monetary benefit or perquisite arising from the business or exercise of profession by the recipient as required under Section 28(iv) of the Act. However, the CBDT *vide* circular no. 12 of 2022 has expanded this position and requires taxpayers to apply deduction whether or not the benefit or perquisite is taxable in the hands of the recipient under section 28(iv) of the Act, or other sections like 41(1), or be not taxable all together. The Circular also expands the scope to cover benefits in the form of cash, contrary to the requirement under Section 194R to cover non-monetary	of Section 194R as understood in its original form. Appropriate clarifications should be issued on the conditions to test the benefit/perquisite arising in the course of business or exercise of profession. There should be clarity for the provider of benefits as to how to test the condition of benefits arising from the business or exercise of profession. An appropriate clarification should be issued to exempting such promotional offers from the ambit of section 194R of the Act as such offers are made with the intent to advertise and promote the goods/services and not with the intent to provide any benefit or perquisite to the	Section 194R as laid down in the Budget 2022. Accordingly, appropriate clarifications as proposed are required.

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	benefit or perquisites • Instances where an assessee gives free goods/services as a promotional offer with the intent to monetize such offerings after the offer period. For e.g., a company provides certain software/ services to a customer free of cost for first 3 months (promotional period) and start charging for software/service after the end of promotional period (i.e., after end of 3 months). The CBDT circular (Question 4) clarifies that no tax is required to be deducted under section 194R on sales discount, cash discount and rebates. The free promotional goods/services offered for the initial period are not per se in the nature of discounts but merely marketing and promotional offerings of the	recipient. Alternatively, the government may consider increasing the threshold from the current Rs. 20,000/- during the FY to Rs. 1,00,000/- during the FY.	

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	assessee. The intention to offer the free goods/services is not to provide any benefit or perquisite to the recipient, but to promote the goods/ service offering and later on monetize such goods/ services.		
• **No interest should be levied for delay in deduction of TDS, if the payment of the said TDS is made within the prescribed due dates- Section 201**	Currently, delay in deduction of TDS by even a day in the same month attracts interest at 1% under section 201 of the Act, even when the TDS liability is remitted on time as per the due date.	It is recommended that no interest should be levied in cases where while TDS may have been deducted late but otherwise deposited as per the due date.	This proposed amendment will avoid administrative burden and would reduce interest cost.
• **Mandatory timeline for CIT(A) to pass the order**	The Act does not provide any mandatory timeline for CIT(A) to pass the order. It only suggests a timeline of one year from the year in which appeal is filed.	It is recommended to introduce a concept for time barring appeals which can be brought at CIT(A) stage as well. A time limit should be introduced, say, 12	CIT(A) is an administrative appellate mechanism and imposing time line for disposal at CIT(A) level can be a part of bringing certainty of delivery, being an important taxpayer service.

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	Though there are timelines for the tax officer to pass order, there is no similar schedule for appellate authorities. It is seen that many appeals are pending for 4 to 5 years before the CIT(A), thus delaying the litigation process, and making the entire CIT(A) route ineffective.	months, extendable to further 3 months depending upon the complexity of the case. Further no interest should be charged for the delay caused which is not attributable to the Assessee	
• **Double taxation to be avoided if subsequently the receipt is characterized as royalty or FTS**	Post-discharge of EQL by a non-resident, in case a dispute arises as to the taxability of receipt (such as the existence of Permanent Establishment or characterization of royalty or Fee for Technical Services (FTS)), and the non-resident is made to pay the new tax demand and penalty and interest imposed by the tax authorities, the non-resident will be subject to double taxation and liable to pay penalty and interest for	The EQL paid by the non-resident should be allowed to be adjusted against the tax demand raised on characterization of the said receipt as royalty or FTS. No interest and penalty should be imposed on the non-resident with respect to such tax demand.	This will provide clarity and certainty to the taxpayers incase the tax officers were to differently characterize the income.

	no fault on its part.		
• **Eligibility to claim foreign tax credit ('FTC') in respect of the EQL paid**	The provisions of EQL are covered under the Finance Act, 2016 and have been kept outside the ambit of the Act. Having said this, there is an ambiguity on whether EQL paid by e-commerce operator is in the nature of income-tax thereby, leading to challenges in claiming FTC in the foreign country	Provisions of EQL should be amended to provide that the levy paid by e-commerce operator would fall within the definition of income-tax under the Income-tax Act. This would entail the e-commerce operator to claim the credit of EQL paid in India in their respective country of residence by taking the benefit of Tax Treaty.	This will avoid dual levy of tax on same income and non-resident e-commerce operators can claim credit in their home country as against deduction.
• **Exclusion of intra-group company transactions and reseller/distributor arrangements from EQL - EQL**	The current definitions of expressions under the EQL may unintendedly cover certain transactions and business models which are B2B supplies and therefore should be carved out of its scope, as these result in double taxation.	A clarification may be issued to the effect that there shall be no double taxation of the same intracompany transaction between related group entities.	This will avoid dual levy of tax on same income.

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	• The Indian group entity pay due taxes in India on their income in accordance the Indian tax and transfer pricing provisions. • However, EQL would levy an additional tax on the same transaction by virtue of the wide scope of 'ecommerce operator' under the EQL provisions on B2B supplies between inter-group companies, reseller/ distribution arrangements wherein digital services/ goods are sold by non-resident entities through Indian establishments acting as resellers/ distributors.		
• **Overlap of SEP and EQL provisions - EQL**	Income earned by e-commerce operator	Clarification should be provided to ensure	This would help to eliminate the overlap

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	on which EQL is applicable, is exempt under Income-tax Act. No clarification is provided that no income should be attributed to SEP in case the same is chargeable to EQL.	that the income chargeable to EQL which is exempt, should not be attributed to SEP. Even in cases where the amount of income attributed to SEP is higher than the amount on which EQL is applicable, the exemption should apply to the entire amount of income attributed, as the overall transaction has been taxed under EQL provisions on gross basis.	of SEP and EQL provisions.
• **Prosecution proceedings – Rules relating to section 276CC**	Prosecution proceedings being onerous in nature, should be reserved in rarest of the rare cases where malafides are established beyond doubt. Section 276CC of the Act lays down prosecution in cases of failure to file the	It is suggested that prosecution proceedings must not be invoked in genuine cases of claims made in relation to non-taxability. It is further suggested that parameters for identifying genuine cases should be introduced.	These are genuine cases and adverse proceedings like prosecution can act as a significant deterrent for multinationals to do business in India.

	ITR within the due date. However, a non-resident may not file an ITR due to a non-taxable position adopted in cases of tax treaty applicability or where there is lack of clarity in the Act or where two views are possible.		
• **Timelines for issuance of refund**	Companies having refunds often receive an intimation under section 143(1) of the Act wherein the amount of refund is determined along with interest, however, the same is not refunded to the bank account of the Companies. Further, no additional interest is granted from the date of intimation till the actual date of refund into bank account. In some cases, the refund of the taxpayers is held back till the scrutiny assessment is complete impacting the working capital flow of the	Amend the provisions suitably to bring a fixed timeline within which all refunds are to be issued to bank account of the taxpayer and in case the same is not met, the interest should be re-calculated and granted up to the date of actual issuance.	Due to lack of stringent timelines for issuance of refunds to the taxpayers there are cash flow issues and working capital concerns. This amendment would help address the same.

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	taxpayer adversely.		
• **Online filing of rectification application and timelines for disposal – Rules relating to section 154**	At present, section 154(7) of the Act requires an application for rectification to be filed within 4 years from the end of the FY in which the order sought to be amended was passed and section 154(8) of the Act, requires the tax officer to pass an order within a period of 6 months from the end of the month in which the rectification application is received.	Guidelines should be for the tax officer to strictly adhere to the timelines prescribed for passing the rectification order.	Rectification matters are pending for more than 10 years and require successive and relentless follow ups with authorities to ensure that the rectification applications are processed.

B. Regulatory

Who is the Regulator and What should the Regulator do?:

A. The current regulatory[i] landscape involves seeking clearances from the apex Committee along with NOCC (Network Operation and Control Centre), TEC (Telecom Engineering Centre), MIB (Ministry of Information Broadcasting), and DoS (Department of Space) while, segment capacity request applications are scrutinized by DoS, the allocation of frequency spectrum and approval of equipment happens at the hands of NOCC, WPC (Wireless Planning and Coordination Wing), and the Standing Advisory Committee on Frequency Allocation(SACFA). The experience with this process seem to suggest that each leg of approval from the aforesaid agencies takes anywhere between five days to two months for just commissioning the network. However, the fact that each agency operates in silos and under multiple streams of regulatory processes, the experience of prosecuting the applications for licenses is often time consuming and uncertain. [ii] Furthermore, the terms offered by DoS while granting permissions are often found to be uneven and one-sided, with DoS reserving powers for unilateral amendment of the terms of grant of permission for applicants. With this background, it is relevant to reassess the role of the regulators for space activities.

B. **IN-Space:** The announcement of IN-Space (Indian Space Promotion and Authorisation Center) as the proposed regulator, while a much needed move to inspire the image of a fair, independent and impartial regulator of space activities, has also been a source of intrigue, as its composition, powers, functions and responsibilitiesis as yet not defined in legislation. As the full extent of commercial space activities in the country is evolving and may see disruptive innovation, IN-Space's mandate as defined in the law governing it must,

1. ***IN-Space Mandate***: What we mean by this is- firstly IN-Space's mandate must be defined in legislation, for the reason that legislation as compared to policies or rules, enjoy greater

legitimacy in the hierarchy of sources of law and reflect the will of the people of the country. Secondly, such a legislation must define the policy framework for IN-Space to exercise its discretion while granting licenses or refusing licenses for commercial space activities. The exercise of such administrative discretion, particularly, in the context of space and telecommunications, has a checkered history, particularly in view of the Antrix-Devas arbitration and the cancellation of the 2G spectrum licenses. Thus, it is useful to recollect the broad principles governing the exercise of administrative discretion, viz.,

a. The discretion must be exercised in good faith and free of any mala-fides[iii].
b. The exercise of discretion must be to further the purpose for which such discretion was granted and must not deviate from such purpose[iv].
c. Ignoring relevant considerations while taking a decision is not permitted[v].
d. Considering irrelevant factors while exercising discretion is also not permitted[vi].
e. The discretion must be exercised reasonably.
f. While exercising the power to impose penalties or any action punitive in nature, the nature of the decision taken must be proportional to the act complained of.

2. Thus, for any regulator of space activities including IN-Space, these considerations for validly exercising the discretion to grant or refuse licenses must be borne in mind. Accordingly, the policy framework which should guide IN-Space in the discharge of its mandate for licensing space activities must account for, at least, the following considerations

   a. The Prospective Licensee's ability, means and will to comply with obligations under the Outer Space Treaty, the Liability Convention, the Registration Convention, ITU Radio Regulations, etc., ("International Space Law") and the extent to which the mission design of the proposed activity discloses the willingness and means to comply with international space law.

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b. While granting preferential treatment to India space companies, which is a laudable character of the proposed regulations, measures to be taken by IN-Space for avoiding a breach of local content sourcing regulations of the World Trade Organization under the General Agreement for Trades and Tariffs and other treaties. This is particularly a risk in the design of the draft Spacecom policy in so far as the regulation of Geostationary SATCOM activities. Rather than insisting on orbital resources (spectrum, frequency and orbital slot) having to be transferred to Indian administrative control, which is impractical, regulations must instead enable Indian resellers to acquire capacity from foreign GSO operators and commercialise them within the Indian market.

c. Measures for promoting responsible behavior in space: Regulations for avoidance of debris and for enhancing space situational awareness.

d. The jurisdiction of other regulators such as the Department of Telecommunications in approving, for example, the equipment used in the proposed space activity for communications, the allotment of spectrum and frequency.

e. The policy framework must identify what conditions of licensing, if any, are non-negotiable and what conditions of licensing, are, subject to certain terms and conditions, may be waived.

f. Conditions, subject to which, license(s) granted, if any, can be terminated or revoked: To this end, especially in light of the Antrix-Devas arbitration and the resulting award against, licenses granted should not be invoked or terminated, except for cause and strictly in compliance with the conditions of the license as well as in compliance of India’s international trade and investment obligations under applicable Bilateral Investment Treaties.

3. At the same time, IN-Space must also have the necessary foundation in the regulations to waive off those conditions of licensing which the policy characterizes as negotiable. However, it is also

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important that the policy guides IN-Space in how to exercise this waiver. To this end, the regulations must stipulate,

a. Who are the authorities to be consulted by IN-Space and whose approval is necessary for IN-Space to waive off the application of a non-critical condition for licensing?

b. The considerations for granting a waiver- the overall benefit of the proposed space activity for national interests versus the risks associated to waiving off a licensing condition, the measures taken to mitigate risks of liability for the nation from the proposed space activity in case the condition so waived, happens to be breached.

c. A provision which grants immunity to the officials of IN-Space who license space activities, against any inquiry or legal proceeding, for actions taken in good faith i.e., an action taken that does not qualify as an offence under the Prevention of Corruption Act. It is very important that authorities are empowered to take decisions without the fear of investigations and legal proceedings. Therefore, the regulations should also contemplate that no legal proceeding can be initiated against officials of IN-Space without a preliminary departmental inquiry and subject further to the findings of such departmental inquiry being endorsed as constituting sufficient grounds to initiate legal proceedings by the Ministry of Law and Justice. To better define a policy in this regard, reference is invited to the judgement of the Hon'ble Supreme Court in the *State of Gujrat v. Kishanbai,* Criminal Appeal No. 1485/2018, in which it was held as follows,

    i. A draft of the chargesheet to be filed against an accused must be first reviewed by the public prosecutor, who must determine whether there exists sufficient evidence to prosecute the accused[vii].

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ii. If, the accused is later acquitted, whether or not the acquittal is on grounds of actual innocence or for insufficient evidence to convict must be noted.

iii. In the event the acquittal is for reason of actual innocence or insufficient evidence, departmental inquiry must be initiated against the concerned investigator(s) or prosecutors, to determine if there existed any negligence or mala-fides and suitable action must be taken against the person(s) involved[viii].

Applying the ratio of the said judgement, inquiries or investigations against officials acting in good faith must be subject to the same standards of accountability as laid down for criminal cases in general in the said judgement, if not more. This is critical to ensure that officials of the regulators have the confidence of the policy backing them in case they decide to exercise their powers to license space activities.

4. Lastly, the regulations must enable IN-Space to coordinate with other regulators of space activities such as Department of Telecommunications, the Ministry of Defense, Home Affairs, etc., to formulate time lines for decisions to be awarded by each regulator concerning the proposed space activity and an overall timeline for IN-Space to aggregate all such approvals and convey the final decision on the grant of licenses.

C. *Department of Telecommunications (DoT):*

1. Currently, the most critical elements of an up-stream space activity i.e, launching of an object into orbit and controlling the said object in orbit comes within the regulatory jurisdiction of the Department of Telecommunications. The equipment used for telecommunications must comply with the standards of the Telecom Engineering Centre

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and the assignment of frequency and spectrum is undertaken by the NOCC and the WPC. To this mix, in the recent past, a Satellite Division has been set up to oversee clearances for satellite activities.

2. Though the DoT has overseen the connectivity revolution in India, satellite based communications is governed by unified license regime and a host of other regulatory frameworks governed by the DoT itself which can be a daunting experience for most prospective licensees. Furthermore, the DoT due to overseeing terrestrial telecommunications as well as the space based telecommunications is at the risk of conflating the dynamics of the two sectors- best exemplified by the controversy over whether spectrum should be auctioned for space based communications or not.

3. In order to address this, the very same regulations defining the mandate of IN-Space should also define the functions, powers and responsibilities of the DoT in governing space based telecommunications activities. The utility of defining the mandate of the DoT within the same legislation governing the mandate of IN-Space is as follows,

    a. Usurping the powers of the DoT in so far as space activities are concerned and awarding it to IN-Space will deprive applicants of the significant regulatory experience of the DoT in handling issues such as orbital slots, frequency and spectrum. Furthermore, the DoT has the benefit of falling back on Telecom Regulatory Authority of India which has an excellent track record of addressing complex and emerging issues in telecommunications through its thought leadership and consultative processes. Even under the Allocation of Business Rules, the DoT has enjoyed a position of influence in the governance of communication in India. Therefore extending the mandate of the DoT for even space based communication is a logical step.

b. By defining the mandate of the DoT within the same legislation as that governing IN-Space, the precise limits of the jurisdiction of both regulators can be easily demarcated. This would go a long way in defining a regulatory process for licensing of space activities that avoids duplication of clearances and approvals. Furthermore, it ensures that on the subject of licensing of frequency and spectrum, a task that is riddled with controversy, does not suffer from conflict amongst the two different regulators i.e., the regulator of space activities and the regulator of telecommunication activities.

4. However, the process of obtaining clearances from TEC, NOCC and the WPC is a time consuming process and in addition to the same, applicants seeking licenses from the DoT have no means of ascertaining who is to be approached first. For example, the DoT website, in spite of all its efforts at maintaining transparency, makes no reference to whether NOCC approval is needed first or whether it is the WPC approval. Furthermore it also fails to clarify whether approvals of NOCC and WPC are necessary for a unified license or whether a unified license is first necessary to secure approvals of NOCC and WPC.

5. To address this issue, the regulatory jurisdiction of NOCC, WPC and TEC along with the DoT in so far as the grant of unified license is concerned may be aggregated into the Satellite Division. In addition, rather than the Unified License regime governing space activities, a separate DoT license regime may be defined for space based communication with a simplified approach for classification. Such an approach must do away with the technology based classification that is currently in the unified license regime i.e., VSAT, GMPCS, ISP,

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etc. and instead define an application based licensing regime. For illustration, the licensing regime of the DoT for space based communication can be as follows,

a. Defense/Disaster Management/Maritime Application
b. Satellite Based Internet/In-Flight Entertainment and Connectivity
c. Tracking, Telemetry and Control
d. Transponder leasing for broadcasting

6. As in the case of IN-Space, the regulations must enable DoT, specifically the Satellite Division to take decisions quickly and effectively to enable innovations in this sector. To this end, the DoT and specifically the Satellite Division must be provided an in-principle power to waive conditions which regulations stipulate as negotiable and provide a policy framework similar to what is proposed for IN-Space for such waivers. This would enable innovative technologies which are not falling within existing regulatory landscapes to deploy their technologies within the oversight of the government, without losing time and at the same time, India can supervise emerging players for enforcing responsible behavior in the field of space based communications.

D. Conclusions: In summary, regulations must provide just two agencies overseeing space activities, IN-Space which represents the perspectives of the Department of Space and the Satellite Division of the DoT, representing the perspectives of the Ministry of Telecommunications. Such a consolidation exercise will avoid the red tape that can sometimes dampen the morale of a commercial space activity and ensure that regulatory decisions are time bound yet reflective of public policy interests.

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[i] "Consultation paper on ease of doing business in telecom and broadcasting sector", Telecom Regulatory Authority of India, 08th of December, 2021

[ii]See Chapter 4 of 1*ibid*

[iii]Rowjee v State of Andhra Pradesh, AIR 1964 SC 962

[iv]S.R. Venkataraman v. Union of India, 1979 2 SCC 491

[v]Ranjit Singh v. Union of India, (1980) 4 SCC 311.

[vi]Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295

[vii] "The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gatheredduring investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges areconscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned agencies will be able to successfully establish the guilt of the accused."

[viii] "On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."