Memorandum for Interim Budget 2024-25

MVIRDC World Trade Center Mumbai considers it a privilege to submit the memorandum for Interim Budget 2024-25. The budget will be presented at a time when India envisions a USD 30 trillion economy and a developed nation status by 2047. Such an ambitious goal can be achieved only through multi-dimensional policy measures to increase labour productivity, boost private investment in infrastructure, research & development and attract foreign capital to meet domestic financing gap and a sound macroeconomic framework. India's macroeconomic framework is in the sound footing with the central government and state governments are on track to achieve the FRBM target of fiscal deficit and current account deficit in the current year is also expected to be within the manageable limit.

While a sound macroeconomic framework provides a conducive environment for private investment, the budget can also be an opportunity to announce the intent of the government to promote further ease of doing business through reforms in tax laws, Companies Act, FDI rules, MSME Act and other statutes. Specifically, we suggest the government to correct inverted duty structure to promote local manufacturing, address ambiguities in rules & acts related to direct and indirect taxes and increase the quality of expenditure by increasing the share of capital expenditure in the overall budget. Specifically, the government may promote public and private investment in agriculture to help our famers manage the adverse effect of climate change and increase post-harvest value addition.

We also request the government to take measures to enhance the global competitiveness of Indian MSMEs, start-ups and women entrepreneurs in the budget as there is a need to strengthen these segments of the economy to promote inclusive economic growth.

Apart from these measures, we suggest the government to consider the following measures mostly related to direct and indirect taxes acts and rules to promote ease of doing business, eliminate ambiguity in interpretation of rules, reduce scope for litigation and increase revenue collection.

1) **Bring clarity in Circular on Cost Recovery Charges:** In response to the growth in international trade and the resulting congestion at Gateway Ports, the establishment of Inland Container Depots (ICDs) became imperative. These facilities, serving as vital transhipment points, play a pivotal role in expediting customs clearance and facilitating the efficient movement of goods to hinterland areas.

   The inclusion of the private sector in the operation of ICDs, as outlined in Circular No. 128/95-Cus., dated 14th December 1995, marked a significant step towards addressing congestion issues and promoting infrastructure development. However, the imposition of Cost Recovery Charges (CRC) has been a contentious issue, impacting the operational efficiency of these crucial facilities. Kindly refer to circular 50/2020 where guidelines were issued but still lack clarity and follow-up circular.

The CRC, calculated at 185% of the aggregate of salary and other emoluments of the officers posted, has become a considerable burden on ICDs. This financial strain adversely affects their ability to operate seamlessly and impedes their role in fostering international trade. Hence, there is an urgent need for the waiver of CRC to alleviate this financial burden on ICDs.

The guidelines for CRC exemption, particularly those outlined in Circular No. 2/2021-Customs, dated 19.01.2021, still carries ambiguities and retrogressive measures. Lack of clarity in interpreting the benchmark criteria, demanding interest as a precondition for exemption, and the prospective application of exemptions create a challenging environment for ICDs.

To ensure the continued effectiveness of ICDs in promoting international trade, it is imperative to address these policy issues comprehensively. The benchmarks for CRC exemption should be reviewed to align with the current trade landscape, and the retrogressive measures introduced should be reconsidered for fair and uniform application.

Suggestion: Therefore, the industry seeks waiver of Cost Recovery Charges on ICDs in various field formations. Additionally, the government may consider comprehensive policy reforms to address the ambiguities in existing guidelines, fostering an environment conducive to trade and economic growth.

Direct Taxes

2) **Allow carry forward losses:** Under Section 80-IAC, tax is exempted on the profit generated by eligible start-up companies for certain specified number of years. Despite this provision, they are unable to carry forward their business losses of preceding years without setting them off against the profit earned in subsequent years.

   Start-up companies incur tax losses in the initial years. The requirement to set off such losses with the profit of the succeeding years and then exempting the resultant profit under the above section defeats the very intent basis which the tax exemption was provided for.

   This requirement to setoff past losses for profits earned even during the exemption period hurts the ability of these start-ups to carry forward the full losses for adjusting against the profit earned after the expiry of the exemption period as defined in Section 80IAC.

   Suggestion: Therefore, it is suggested to make suitable amendment in the relevant provisions in Section 80IAC and under Chapter VI relating to "Aggregation of Income and Set off loss" for considering an exception for eligible startup companies under Section 80IAC in allowing the carry forward of losses of preceding years without the same being set off from profit earned in subsequent years and provide for 100% exemption of the profits as provided under Section 80IAC.

3) **Exempt TCS on B2B transactions of tour package**: The applicability of tax collection at source (TCS), under section 206C(1G)(b), on B2B transactions, where a tour package is sold by one tour operator to another blocks working capital and increases compliance cost.

Under the aforementioned section, tax has to be collected at source from the buyer of overseas tour package and it applied to B2B transactions as well. The number of companies in the travel industry has considerably increased, including MSMEs working as tour operators at thin margins. Applicability of TCS provisions on B2B transactions blocks working capital and increases compliance cost for these MSME units.

Also, there is no immediate refund or adjustment of the amount of TCS in case the tour package is subsequently cancelled. So, the collectee has to wait till the processing of the income tax return filed for the year.

Suggestion: It is suggested to provide clarification that the TCS provision is not applicable to B2B transactions or where multiple players are involved. In such cases, an undertaking or declaration may be sought as regard tax required to be collected has already been complied with and no further TCS applicable on the same transaction as provided for in the application of various other withholding tax provisions.

4) **Extend time limit under section 80EEB**: The government introduced section 80EEB to promote sale of electric vehicles, which are environment-friendly compared to traditional internal combustion vehicles that pollutes air.

   Under this section, loans raised to purchase electric vehicles are eligible for deduction only if they are sanctioned during the period April 1, 2019 – March 31, 2023.

   Suggestion: In order to sustain growth in the production and sale of electric vehicle, the government may extend the eligibility period beyond March 31, 2023 under section 80EEB.

5) **Expand scope of metro cities to claim HRA benefit**: The Rule 2A of Income Tax Rules 1962 was introduced in the year 1965 to provide exemption of House Rent Allowance upto 50% of salary under Section (10(13A) against rent paid on houses in Bombay, Calcutta, Delhi and Chennai. However, with rapid urbanisation, the number of metropolitan cities have increased substantially and hence the new metros of Bangalore, Jaipur, Ahmedabad, Delhi NCR are not covered under the said Rule.

   Suggestion: It is suggested to amend the Rule 2A by including newly emerged metropolitan cities so that assesses in these cities may benefit from the HRA exemption.

6) **Address backlog of pending appeal matters**: The industry and the tax department is facing the issue of cashflow being stuck for long time due to non-disposal of long pending appeal matters. The industry complains that there is huge delay in fixing of hearings and passing of orders by the commissioner appeals both online and in-person. The tax department has not taken action on these pending appeals, some of which are pending for more than six years, despite repeated reminders and requests.

   Suggestion: It is suggested that the Commissioner of Income Tax (Appeals) and the Joint Commissioner of Income Tax (Appeals) earnestly take up the pending appeal matters, both large and small cases, for hearing on priority basis. The department may adopt a phased time-bound target for clearing pending matters, with an action plan for the next 1-2 years post which all the regular matters should be closed within a year of filing. The government may also increase the strength of the commissioners adjudicating these matters for speedy disposal of appeals.

7) **Litigation on penalty and interest issues:** There are many appeals which are pending in High Court and at times in Supreme Court for more than 10-15 years because of shortage of judges and adjournments sought by litigants. Currently, after the appeal is decided by the Tribunal, the taxpayer or the tax authority can file further appeal before the High Court. The tax authority can appeal if the quantum of demand exceeds a specified threshold limit. The High Court admits the appeal if the issue involves substantial question of law.

   Suggestion: The government may reduce litigation at this level by providing an option to the taxpayer to settle the dispute by full payment of taxes and part of interest with waiver of balance interest, penalty and prosecution.

   The government may also make appropriate amendment in the penalty provisions to waive penalty on issues which are pending before the High Court to settle substantial question of law and legitimate points of disputes.

8) **Granting of immunity on select issues under Section 270AA:** Under Section 270AA (1) (b), a taxpayer can seek immunity for all the issues by paying interest and penalty or contest all issues. There is no provision to allow the taxpayer to seek immunity on select issues, while contesting some other issues.

   Suggestion: The government may amend Section 270AA to allow taxpayers to settle select issues. Specifically, the government may include provisions to allow the taxpayers to mention the issues on which he seeks to settle the dispute by paying up tax and interest thereon. This will allow taxpayers to seek immunity on select issues by paying up tax and interest thereon, while contesting other issues in further appeal.

9) **Repetitive Assessments:** Generally, issues under assessments are repetitive and the scrutiny assessment for every year separately entails a lot of repetitive work.

   Internationally, most assessments are done for a block of 2-3 years, which avoids repetitive litigation on the same matter. India may also consider a mechanism to pick up assessments for all open years together.

   Mostly, issues under assessments are repetitive and the scrutiny assessment for each year separately entails a lot of repetitive work. Similar information on facts is required to be provided every year. Unfortunately, the conclusion on the issues is also the same as in the earlier years, despite favourable appeal outcome, until Supreme Court rules on the matter.

All of these can be avoided, if assessments are done in block of at least 2-3 years. Appeals may be heard together without the requirement to file separate appeal memos and paperwork. This can avoid duplicity in pendency of appeals as well.

An alternative method of reducing the repetitive administrative efforts on Transfer Pricing (TP) and non-TP assessments is to delink the two assessments and make them independent of each other. Thus, both or either of them can be taken up independently for a block of 2-3 years based on risk assessment criteria.

Therefore, the government may introduce a "block of years" concept in the scheme of assessments.

10) **Implement Pillar 2 rules of OECD**: The Global Anti-Base Erosion Rules (GloBE) or Pillar 2 was adopted by 135 jurisdictions, including India, in 2021, to ensure that large MNCs pay a minimum level of tax on the income arising in each of the jurisdictions where they operate.

Pillar 1 and Pillar 2 are considerable improvements in the current tax legislation through their focus on better protection against profit shifting and tax competition as the same being more suitable to the circumstances of developing countries.

Currently, the European Union, Japan, Mauritius, Qatar, South Korea, and the UK have already introduced final legislations for Pillar 2 rules. Further, 30 more countries are at draft legislation stages or have communicated their intentions to implement Pillar 2 in their legislation.

Suggestion: Since the OECD has recommended that the Pillar 2 rules become effective in 2024, the Indian government shall expedite their impact-assessment and introduce the draft rules for public consultation (if required) before the budget or may introduce the rules adopted from the GloBE framework in the Budget 2024.

The GloBE rules, which set out the detailed terms of the global minimum tax, are drafted in the form of a legislative template which implementing jurisdictions can introduce into domestic law. These rules are complemented by a Commentary and Administrative Guidance which provides further detail on the interpretation and intended operation. The Indian Government can adopt this framework in drafting the Pillar 2 rules from Indian perspective.

11) **Time limit for disposal of appeals allocated to JCIT:** The Joint Commissioner of Income Tax (Appeals)/ Addl. CIT (A) was introduced to facilitate speedy disposal of e-appeal proceedings. However, there is no timeline prescribed for issue of notices and disposal of appeals being handled by the JCIT / Addl. CIT(A). Introduction of time limits would ensure that the appeals are disposed of more speedily as is the intent of the scheme.

Suggestion: It is recommended to introduce a time limit for disposal of appeals allocated to JCIT.

12) **Exemption under Section 54F:** Currently, investors are allowed exemption of capital gains tax on transfer of capital assets if the gain is invested in residential houses. This is in addition to the exemption being allowed under Section 54 (on fulfilment of conditions prescribed therein).

However, there is no exemption of capital gains tax if the amount is invested in commercial real estate by an individual or Hindu Undivided Family (HUF).

Suggestion: It is suggested to allow deduction in case the capital gain is invested in commercial premises. This move would boost the real estate sector on an overall basis.

13) **Concessional Tax**: Firms and Limited Liability Partnerships (LLPs) are subject to a flat rate of 30% tax under the existing scheme as the concessional tax regime, under Section 115BAB, is currently applicable only for companies. In case this benefit of concessional tax is extended to LLPs/firms, they could opt for the same and avoid alternate minimum tax (AMT) liability, as the case may be.

    Suggestion: The government may extend the benefits of concessional tax regime to LLPs and firms in order to support their business growth.

14) **Concessional Tax Regime time limit:** The time limit for setting up manufacturing operations by newly incorporated companies is March 31, 2024.

    Suggestion: The government may extend this time limit to March 31, 2025 in order to support the Make in India Programme and Atmanirbhar Bharat campaign.

15) **Lack of clarity on computation of accumulated profits:** Currently, there is lack of clarity on the computation of accumulated profits in case of capital reduction of a single class of shareholders (whether proportionate accumulated profits to that class only should be considered, what all components fall under accumulated profits etc.

    Suggestion: The government may issue clarification regarding accumulated profits in case there is more than one class of shareholders and capital reduction is happening for a single class of shareholders.

16) **Applicability of Significant Economic Presence (SEP)**: The wide applicability of SEP casts a huge compliance burden on Indian counterparts having to undertake TDS compliances (such as seeking TRCs, Form 10Fs, determining when thresholds are crossed etc.

    Suggestion: The government may rationalise section 9 to ensure that the provisions of significant economic presence are triggered only on e-commerce or digital transactions and not on transactions involving physical movement of goods by way of conventional contracts.

    The government may also specify the attribution norms for tax purposes in case of non-residents having significant economic presence in India. It is also suggested to issue clarification on the overlap in transactions covered by the definition of SEP and other clauses of section 9 (1).

17) **Clarification on Section 79:** The issue of applicability of Section 79 is a long drawn matter as courts have passed contrary rulings on whether the said section will apply only to a change of more than 51% in the immediate holding company or it would also apply in the case of change in the ultimate holding company.

Suggestion: The government may issue clarification on this section to reduce scope of litigation.

Indirect Taxes

18) **Clarification on allowing virtual office as place of business for GST registration**: In various rulings it has been held that separate GST registration can be allowed to multiple companies functioning in a co-working space or virtual office and which provide services alone. While applying for GST registration for virtual office or co-working space, the rental agreement with the landlord and the lessee must be uploaded as proof of place of business. There is no prohibition under GST law for obtaining GST registration to a shared office space or virtual office if the landlord allows such sub-leasing as per the agreement.
However, extensive crackdown by the department on fake invoicing has led to a pressing need for issuance of a clarification on whether virtual office can be considered as a place of business for the purpose of GST registration.

    Suggestion: A clarification should be issued to resolve whether virtual office can be considered as a place of business for the purpose of GST registration.

19) **Option to revise form GSTR 3B and GSTR-1 after filing**: Currently, there is an option correct or alter data before filing GSTR 3B. There is an option to reset GSTR 3B through which the status of 'Submitted' will be changed to 'Yet to be filed' and all the details filled in the return will be available for editing. But once it is filed, there is no option revise it. So, taxpayers do not have the option to revise the returns and rectify the mistakes after filing.

    Suggestion: The government may introduce appropriate provisions to allow taxpayers to revise the GST return filed (i.e. GSTR 3B and Form GSTR 1. The government may also introduce a one-time amnesty scheme to rectify past mistakes.

20) **Centralised registration:** Taxpayers in the service sector is particularly affected by the requirement to take separate registrations in all states of business operations. This requirement increased the administrative and compliance cost of service sector companies as they have to maintain accounts, records in each point of registration and there is separate audit and assessment in each of these locations by the local tax authorities. Also, multiple tax officers in different states are dealing with the same tax payer, which also leads to disparity in the interpretation of the provisions of the GST Law.

    Suggestion: The government may introduce provision to allow centralised registration of large taxpayers in certain service sectors such as telecom, banking and financial services with aggregate turnover exceeding say Rs. 500 crore or Rs. 1,000 crore. In order to have administrative control at the state level, monthly return may contain state-wise allocation of ITC and output tax liabilities. The government may dispense with the need to maintain accounts and records at various locations to ease compliance burden. The government may introduce centralised assessment by tax authorities to allow the company to cater to their requests and have the assessments concluded in a time-bound manner.

21) **Rationalisation of tax slabs:** There are four tax rate slabs under GST regime, viz. 5%, 12%, 18% and 28%. There is also a cess on luxury and de-merit goods such as automobile, tobacco and

aerated drinks. On precious stones and metals, special rates of 0.25% and 3%, respectively are applicable. Multiple tax slabs defeat the purpose of the introduction of GST.

Suggestion: It is recommended to merge tax rate 12% and 18% or introduce a single average tax rate slab of 15%.

22) **Dual compliance of E-way bill and E-Invoicing:** Currently, business engaged in supply of goods are required to generate an E-way Bill and an E-invoice for the same transaction. Thus, companies have to fulfil dual compliance for the same transaction. An E-way Bill is generated electronically for movement of goods by vehicle from one point to another point. E-Invoicing refers to obtaining a reference number by reporting details of specified documents to a government notified portal. E-way bill and E-invoicing require companies to install appropriate ERP software and information technology tool, which increases the cost of compliance for companies.

    Suggestion: In order to ease compliance burden on small taxpayers, there is a need to integrate E-invoicing and E-way bill into one. The government may replace the existing procedure of generating E-way bill with E-invoicing to improve ease of compliance.

23) **Abolition of anti-profiteering provisions:** Businesses are facing high cost of administrative and compliance procedure and also suffering from ambiguity due to lack of guidelines to implement anti-profiteering provisions. Even though it was originally proposed for a period of two years, the National Anti-profiteering Authority (NAA) continues to exist for the last six years since the introduction of GST. The cost of compliance and administration significantly outweighs the risks that some businesses seek to profiteer from the change in GST rates.

    Suggestion: The government may discontinue the provisions of anti-profiteering under the GST law with prospective effect. Determination of prices may be left to the market forces.

24) **Refund of unutilised ITC on capital goods:** Businesses engaged in zero-rated supplies are unable to claim refund of unutilised input tax credit (ITC) on capital goods as rule 89(4) of the CGST Rules defines net ITC as ITC availed on inputs and input services and thereby excludes the ITC availed on capital goods. Government had earlier clarified that ITC on capital goods is not refundable under letter of undertaking (LUT) option.

    However, the term Input tax is defined [Section 2(62) of the CGST Act] to mean central tax, state tax, integrated tax or union territory tax charged on any supply of goods and services or both. This definition has not differentiated between the ITC on inputs, input services and capital goods which means it includes ITC on inputs, input services and capital goods.

    Also, section 16 of the IGST Act, 2017 entitles exporters to claim refund of unutilised ITC in accordance with the provisions of Section 54 of the CGST Act. Sub-section (3) to Section 54 allows a registered person engaged in provision of zero-rated supplies to claim refund of unutilized ITC. Therefore, even this implies that Section 54 also entitles the refund of ITC on capital goods.

    Section 54 of the CGST Act provide for refund of unutilized ITC in case of zero-rated supply. However, Rule 89 prescribes the procedure for claiming refund and restrict the refund by overriding the entitlement given to person making zero-rated supplies under Section 16 of IGST Act and Section 54 of CGST Act.

It is a settled law that rules cannot override the statute and if it overrides, the same becomes ultra vires and becomes invalid. Non-grant of refund of GST paid on capital goods to such companies hampers the working capital of such companies.

This is against the principle of indirect taxes wherein set-off of taxes paid for input services or capital goods is allowed while paying taxes on output services.

Suggestion: It is therefore recommended to amend Rule 89 of CGST Rules whereby the term Net ITC also includes ITC availed on capital goods.

25) **Bring petroleum products under GST:** Taxes on petroleum products such as crude oil, petrol, diesel, natural gas and aviation turbine fuel are not subsumed under GST. Therefore, CENVAT credit is not available on these products and taxes paid thereon remains as a cost. Under the GST regime, exclusion of petroleum products is breaking the chain of input tax credit and substantially increases the cost of doing business.

It also has negatively impacted the oil & gas sector due to non-availability of input tax credit ('ITC') of GST paid on procurement of goods and services. Besides hampering ITC, it has also imposed additional burden on the consumer.

Suggestion: Government may include petroleum products under the GST regime to prevent cascading impact of the existing taxes on these products and eliminate its adverse impact on businesses and consumers.

26) **Set up an independent National GST Secretariat:** In order to have a uniform and consistent application of GST throughout the country, the government may set up an independent National GST secretariat headed by a Secretary General represented by the Centre and the State Government officials. A Tax Policy Advisory Committee co-opting external economists or tax experts can also be formed to assist the national GST Secretariat in formulating Tax Policies.