From:	Shalini Mathur
Sent:	Tuesday, 2 March, 2021 4:55 PM
To:	Kamlesh Chandra Varshney
Cc:	Ganesh Raj
Subject:	Representation from ASIFMA and CMTC re Finance Bill, 2021
Attachments:	Signed Cover Letter_Mr Varshney.pdf; Annexure.pdf

Mr Kamlesh Varshney
Joint Secretary, TPL – I
Central Board of Direct Taxes
Ministry of Finance
New Delhi

Dear Sir,

On behalf of the members of the Asia Securities Industry & Financial Markets Association (ASIFMA) and the Capital Markets Tax Committee of Asia (CMTC), we enclose for your kind consideration, a representation on the proposal in Finance Bill 2021 regarding the time limit for initiating re-assessment proceedings.

The reduction in time limits for re-assessment is a welcome move. However, the way the provisions are worded, it may result in the unintended consequence of increasing the limit of re-assessment from 6 years to 10 years in almost all cases. This would materially increase uncertainty for taxpayers and lengthen the time limit for attaining finality of proceedings.

We submit that the above proposal may be reconsidered. It may be clarified that:

- the 10 years limit would only apply to search cases.
- "asset" for purposes of section 149(1) shall not include any property or item related to income which has been disclosed by the assessee along with the return of income or during the assessment proceedings under section 143(2) of the Act.
- books of accounts or other documents or evidence shall not include any information which has been disclosed by the assessee along with the return of income or during the assessment proceedings under section 143(2) of the Act.

We would be grateful if the suggestions are considered favourably. In case any further details are needed on any of the suggestions, please let us know.

Best regards,
Shalini

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2 March 2021

Attn:
Shri K.C. Varshney,
Joint Secretary,
Tax Policy and Legislation (TPL-I),
Central Board of Direct Taxes,
North Block,
New Delhi - 110001

Dear Mr Varshney,

Re: ASIFMA-CMTC Submission: Amendment proposed by Finance Bill, 2021, to the Income-tax Act, 1961 (Act) with respect to time limit for initiating re-assessment proceedings.

On behalf of the members of the Asia Securities Industry & Financial Markets Association (ASIFMA) [1] and the Capital Markets Tax Committee of Asia (CMTC) [2], we are writing to highlight the key issue with respect to time limit for initiating re-assessment proceedings which is relevant in the context of the offshore investors community including Foreign Portfolio Investors (FPIs).

We would like to submit that the reduction of time limits for re-assessment is a welcome move, which would further the Governments stated objective of reducing litigation and increasing the ease of doing business in India. However, the wording of the provisions result in the unintended consequence of seeming to increase the limit of re-assessment from 6 years to 10 years in almost all cases. This would materially increase uncertainty for taxpayers and lengthen the time

[1] ASIFMA is an independent, regional trade association with over 140 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

[2] ASIFMA is an independent, regional trade association with over 120 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

limit for attaining finality of proceedings. This has many foreign investors very concerned about these provisions.

We respectfully submit our recommendations here which would align the provisions in the Finance Bill, 2021 to the stated intent / objective of the Government.

We have attached herewith our submission/representation on the aforementioned issue as Annexure.

ASIFMA and CMTC has been regularly engaged with the Government of India on various tax and policy related matters. Foreign investors seek transparency and predictability in the tax regime. In line with this, to make India more attractive, increase the inflow of foreign investments in India and boost its economy, the need for predictable tax legislation is of paramount importance. Addressing the aforesaid tax issue proposed by Finance Bill, 2021 would echo the commitment of the Government to provide a stable and predictable tax regime.

Our members look forward to the ongoing consultation on these important issues. For further information, please contact Patrick Pang, ASIFMA Head of Compliance and Tax (ppang @asifma.org) and Patrick Donovan, CMTC Chairperson (patrick-j.donovan@ubs.com).

Yours sincerely,

Patrick Pang	Patrick Donovan
Head of Compliance and Tax	Chairperson
ASIFMA	CMTC

Annexure

Clarity with respect to time limit for re-assessment proceedings

Background:

1. One of the key proposals announced in the Finance Bill, 2021 is with respect to reduction in time limits for re-opening of assessment proceedings and to bring search cases within the proposed new procedure.

2. In this regard, the Finance Bill, 2021 proposes to revise the time limit under section 149 of the Act for issuance of notice under section 148 of the Act. It is now proposed that no notice under section 148 of the Act shall be issued after –

    - 3 years from the end of relevant assessment year (AY) to be reassessed (except for below case);

    - 10 years from the end of AY to be reassessed where assessing officer has books/ documents/ evidence in possession which reveal* taxable income, which is represented in the form of an asset*, escaping assessment of minimum INR 5 million [section 149(1)(b) of the Act].

    *Further, the scope of the term 'asset' and meaning of the term 'reveal' in the proposed section 149(1)(b) of the Act is very broad and has not been defined.

3. Based on the Budget speech of the Hon'ble Finance Minister and the Explanatory Memorandum to Finance Bill, 2021 the intent of the amendment appears to apply the extended period of 10 years for the reassessment proceedings only in respect of search cases and not in all cases. This is further evidenced by the pre-amendment regime of search proceedings (of section 153A to section 153D of the Act) being subsumed into the proposed provisions relating to reassessment proceeding,

4. This is a welcome move and would certainly go a long way towards the Government's stated objective of less litigation and increasing the ease of doing business in India. However, the wording of the provisions in the Finance Bill, 2021 can be read to mean that the 10 years' time limit is not restricted to search cases. This has concerned many foreign investors; though the intent of the Government clearly seems to restrict this application to search cases. If left unclarified, this would materially increase the uncertainty faced by the taxpayers with respect to their Indian business / investments.

Recommendations

5. We strongly recommend that the Government clarify this issue prior to enactment of the Finance Bill, 2021 to meet the stated objective. This could be done by inserting a proviso to section 149(1) to clarify that the 10 years limit would only apply to search cases.

6. Additionally, clarity is required in respect of the relevance of the term ‘income chargeable to tax in the form of an asset’ to trigger the 10-year time limit. We recommend that it be clarified that “asset” for purposes of section 149(1) shall not include any property or item related to income which has been disclosed by the assesse along with the return of income or during the assessment proceedings under section 143(2) of the Act.

7. Similarly, the scope of information under section 149(1)(b) to be ‘revealed’ should certainly be external to what has already been disclosed by the taxpayer.

   Accordingly, it is recommended that it be clarified that books of accounts or other documents or evidence shall not include any information which has been disclosed by the assesse along with the return of income or during the assessment proceedings under section 143(2) of the Act.