

PRE-BUDGET MEMORANDUM - 2014

DIRECT TAXES



THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA

NEW DELHI





PRE-BUDGET MEMORANDUM - 2014 DIRECT TAXES

- 1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum - 2014 on Direct Taxes to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2014-15.
- 1.2 The suggestions have been broadly categorized under the following heads:
- Part I** : Suggestions for improving Tax Administration and Compliance
 - Part II** : Suggestions relating to the provisions of Income-tax Act, 1961
 - Part III** : Suggestions relating to the provisions of Wealth-tax Act, 1956
- 1.3 The suggestions are given Chapter wise and are intended to serve the following purpose:
- I. Improve tax collection.
 - II. Reduce/minimize litigations
 - III. Rationalization of the provisions of direct tax laws.
 - IV. Removal of administrative and procedural difficulties relating to Direct Taxes





INDEX

<i>Sr. No</i>	<i>Suggestion</i>	<i>Page No.</i>
<i>PART I: Suggestions for improving Tax Administration and Compliance</i>		
1.	Definition of the term "accountant" in the Direct Taxes Code, 2013	3
2.	First Schedule – Surcharge	7
3.	Rates of Taxation	7
4.	Foremost requirement -Respect the "Taxpayer"	12
5.	Targets for collection of taxes-Not essential	13
6.	Verification of all income-tax returns	13
7.	TCS @1% on sale of all motor vehicles	15
8.	Forms of Income tax return to incorporate details of tax payments made under other legislations	16
9.	Consolidation of multiple reports to be issued by Chartered accountants in a single format	17
10.	Generation of Form No. 15G, 15H ,60 and 61 through system	17
11.	A single ITR form to replace all ITR forms	18
12.	Procedure for surrender of PAN	18
13.	Creation of online grievance portal	19
14.	Extension of last date of Payment of tax due to Public holiday - Circular No. 676 dated 14.01.1994 read with Section 10 of the General clauses Act, 1897	20
15.	Issues arising from applicability of Companies Act, 2013:	
	(a) One person Company (OPC):	20
	(b) Reopening of accounts on Court's/ Tribunal order under section 130 of the Companies Act, 2013:	22
	(c) Reference of Schedule VI of the Companies Act, 1956 to be substituted with Schedule III of the Companies Act, 2013:	23
	(d) Difference in the definition of "related party" in Companies Act, 2013 and Income tax Act,1961:	23
	(e) Depreciation Transition Provisions-Impact on MAT	23
	(f) Amalgamation	24
	(g) Amalgamation and Demergers – Limitation on powers for assessment of cases dealing with Amalgamation and Demergers effected under the new Companies Act, 2013.	25
16.	Corporate Social Responsibility Costs	27
17.	Differential Stamp duty charges being paid by CA's and Advocates on letter of authority for representing the client	27
18.	Gaps in electricity generations	28



The Institute of Chartered Accountants of India

19.	Allowability of Interest paid under Income tax Act, 1961	28
20.	Issues regarding PAN allotment	28
21.	AIR information in "My Account" facility	30
22.	Applicability of SA -700 on form of audit reports	31
23.	Foreign tax credit guidelines	32
24.	Issues arising from Notification No 67/2013, dt 2-9-2013 amending Rule 37BB of IT Rules, 1962 wrt Foreign Outward Remittances-Form 15CA & Form 15CB	33
25.	Number of Returns and payment schedule should be curtailed	34
26.	Extension of time limit for filing of TDS Return	35
27.	Challan correction mechanism	35
28.	(a) Difficulties in obtaining old paper refunds	36
	(b) Refunds not delivered due to change in address	36
	(c) Issue of Refunds in case of legal heirs	37
	(d) amount to be directly paid into the bank accounts of the assesseees	37
29.	Audit of TDS returns	37
30.	Monetary limits in the Income-tax Act, 1961	38
PART II : Suggestions relating to the provisions of Income-tax Act, 1961		
CHAPTER -I	PRELIMINARY	
31.	Definition of "amalgamation" in section 2(1B)	43
32.	Books of accounts in electronic mode-Section 2(12A)	44
33.	a) Section 2(15)- Definition of charitable purpose	45
	b) Activities of Governmental authorities be treated as activities for charitable purpose	47
	c) Mandatory application of income by charitable trusts/ institutions under section 10(23C)	48
34.	Deemed Dividend-section -2(22)(e)	50
35.	Section 3-Definition of Previous year	51
CHAPTER -II	BASIS OF CHARGE	
36.	Scope of Royalty Income – Section 9(1)(vi) of Income-tax Act, 1961	55
37.	Carry forward of excess foreign tax credit	58
CHAPTER -III	INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME	
38.	Leave Travel Concession/Assistance – Replacement of "Calendar year" by "Financial year"	61
39.	CER Sale to be treated as Capital Receipt	61
40.	Section 10(10D) TDS in respect of maturity of Insurance policies which are taxable under section 10(10D)	62
41.	Definition of "Keyman Insurance Policy" – Section 10(10D)	63
42.	Section 10(13)- Payment from approved superannuation fund	65



The Institute of Chartered Accountants of India

43.	Annual receipts" under section 10(23C)	66
44.	Tax policy for MGNREGA, SSA, NRHM	67
45.	Income-tax exemption for securitization trusts, levy of distribution tax on income distributed by such trusts under section 10(23DA)	69
46.	Section 10(23FB) Tax exemption for Alternative Investment Funds – Venture Capital Funds	74
47.	Section 10(26) – Exemption to Scheduled Tribes in specified areas – time for removal	82
48.	Income of minors – to increase exemption limits under section 10(32)	82
49.	Section 10B – Exemption to newly established 100% EOUs – should be extended to STPIs registered units	82
CHAPTER IV	COMPUTATION OF TOTAL INCOME	
50.	Disallowance of expenditure incurred in relation to income not includible in total income under section 14A of the Act:	87
PART A-	SALARIES	
51.	Deduction to salaried assesses- Payment for notice period	89
52.	Deduction for Employee Stock Option Cost	90
53.	Medical reimbursements for retired employees	91
PART C-	INCOME FROM HOUSE PROPERTY	
54.	Deduction u/s 24(a) of the Income-tax Act, 1961	92
55.	Deduction for ground rent other than u/s 24(a)	92
56.	Interest on borrowed Capital	93
PART D	PROFIT AND GAINS OF BUSINESS AND PROFESSION	
57.	(a) Depreciation on books used by professionals	94
	(b) Section 32 -Depreciation in case of slump sale	94
	(c) Incentive for installation of Solar Power generating devices	96
	(d) Depreciation on "Oil Well"	97
58.	Additional Depreciation u/s 32(1)(ia)	98
59.	Section 35(1)(ii) and 35(1)(iii)- Removal of discrimination u/s 80GGA	101
60.	Deductibility of R&D expenditure incurred by software development companies under Section 35(2AB)	101
61.	Expenditure on Specified Business under section 35AD	102
62.	(a) Capital raising expenses	103
	(b) Amortization of Capital expenditure	103
63.	Deduction for payments under Voluntary Retirement Scheme – Section 35DDA:	104
64.	Due date for crediting the contribution of employees to the respective fund–Section 36(1)(va) read with Section 2 (24)(x)	104
65.	NPA calculation for NBFCs	106
66.	Section 40(a)(iib) - Disallowance of certain payments made by State	107



The Institute of Chartered Accountants of India

	Government Undertaking (SGU)	
67.	Required clarification in respect of applicability of section 40A(3)	108
68.	Explanation 5 to Section 43(1) – “building” to be replaced by “assets”	108
69.	Section 43A –Exchange fluctuation loss due to sharp fall in Rupee value	109
70.	Provision for leave salary – Section 43B(f)	112
71.	Section 43CA –Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.	113
72.	Amendment in Section 43D and Rule 6EA with reference to Non-Scheduled Co-op Banks	115
73.	(a) Section 44AA-Monetary limits to be withdrawn	116
	(b) Rule 6F-Upward revision of limit of Rs.1,50,000	117
	(c) Rule 6F(2)(iv) – requires to be dispensed with	118
74.	Section 44AD-Presumptive Income – Some Issues	119
	(a) Maintenance of Books of Account	119
	(b) Eligible Business	119
	(c) Applicability of section 44AD	121
75.	Revision in date of determination of Fair Market Value	122
76.	Limited Liability Partnership (LLP)-	122
	(a) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.	
	(b) Taxability on conversion of firm into LLP Clarification required	122
	(c) Consequential amendment required in section 47(xiiib)	123
77.	Section 49 -Cost of acquisition with reference to certain modes of acquisition	124
78.	Forfeiture of Advance Money u/s 51	125
79.	Section 54- Investment in residential house	126
80.	Certification of deductions claimed under section 54, 54F, 54EC etc	126
81.	Withdrawal of deposit from capital gain scheme account	127
82.	Issue on capital gain arising on the transfer of land in respect of joint development agreement	128
83.	Section 54EC-Capital gain not to be charged on investment in certain bonds	131
84.	Exemption under section 54 & 54F	131
85.	Capital gain on transfer of residential property to be taxed in certain cases- Section 54GB	141
PART F	INCOME FROM OTHER SOURCES	
86.	Definition of the term relative- Explanation to Section 56(2) (vii)	144
87.	Section 56(2)(vii)(b) – Immovable property received for inadequate consideration	145



The Institute of Chartered Accountants of India

88.	Exclusion of rights shares/ fresh issue of shares from the ambit of section 56(2)(vii a)	145
89.	Valuation of shares- Section 56(2)(vii b)	146
CHAPTER VI	AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS	
90.	Onus of proof in respect of cash credits consisting of share application money, share capital, share premium etc-Section 68	149
91.	Rationalization of section 69C	150
92.	Section 72- Carry forward and set off	150
93.	Tax incentives under Section 72A in respect of Amalgamation or Demerger (to be extended to all businesses):	150
94.	Section 73A -set-off of losses of specified business against non specified business	151
95.	Review of section 78(1)	151
CHAPTER VIA	DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME	
PART B	DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS	
96.	Section 80CCG- Rajiv Gandhi Equity Linked Savings Scheme	155
97.	Preventive health check up-Section 80D	156
98.	Increase in limit of deduction u/s 80DD & 80U	157
99.	Section 80EE - Deduction in respect of interest on loan taken for residential house property	157
100.	Deduction u/s 80G – to liberalise the exemptions by enhancing ceilings specified	159
101.	Donations made of any sum exceeding ten thousand rupees in cash- sections 80G and 80GGA	161
102.	Limits of House Rent Allowance (HRA) & 80GG:	161
PART C	DEDUCTIONS IN RESPECT OF CERTAIN INCOMES	
103.	a) Section 80IA – Unit-wise deduction should be allowed	163
	b) Extension of sunset clause under section 80-IA	163
	c) Benefit u/s 80IA shall be allowable to the resulting / amalgamated company in case of demerger / amalgamation	164
104.	Incentivizing investments in respect of agricultural infrastructure	167
105.	(a) Section 80JJAA – Deduction in respect of employment of new workmen	168
	(b) Section 80JJAA – Deduction in respect of employment of new workmen	169
106.	Deduction in respect of royalty on books – Section 80QQB	169
PART CA	DEDUCTIONS IN RESPECT OF OTHER INCOME	
107.	Deduction in respect of interest on deposits in savings account- Section 80TTA.	171



The Institute of Chartered Accountants of India

CHAPTER IX	DOUBLE TAXATION RELIEF	
108.	Applicability of Education Cess and Secondary and Higher Education Cess –double taxation Avoidance Agreement	175
CHAPTER X	SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX	
109.	a) Domestic Transfer Pricing [DTP] – Sections 92, 92BA, 92C, 92CA, 92D & 92E	179
	b) Guidance in respect of benchmarking of Directors remuneration	180
	c) Arm’s Length Price vs Ordinary Profits	180
	d) Increase in the threshold limit of Rs. 5 crore	180
	e) Documentation Requirements	180
CHAPTER X-A	GENERAL ANTI AVOIDANCE RULES	
110.	GAAR	183
CHAPTER XII	DETERMINATION OF TAX IN SPECIAL CASES	
111.	Removal of anomalies in sections 111A & 112	187
112.	Sec.115- Inter Corporate Dividend Distribution Tax (DDT)	187
113.	Section 115A Rate of TDS on income by way of royalty or Fees for technical services	188
114.	Anonymous donations under section 115BBC	190
CHAPTER XII-B	SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES	
115.	Tax Credit u/s 115JAA & 115JD read with section 115JB & 115JC	195
116.	Book Profit Tax (MAT) on Scientific Research Expenditure	195
117.	Section 115JB Minimum Alternate tax	196
CHAPTER XII-F	SPECIAL PROVISIONS RELATING TO TAX ON INCOME RECEIVED FROM VENTURE CAPITAL COMPANIES AND VENTURE CAPITAL FUNDS	
118.	Due date of furnishing statement in Form No.64 under section 115U read with Rule 12C	201
CHAPTER XIII	INCOME TAX AUTHORITIES	
PART C	POWERS	
119.	Section 132- Search and seizure	205
CHAPTER XI	PROCEDURE FOR ASSESSMENT	
120.	(a) Due date of filing of return in section 139(1) for partners other than working partners	211
	(b) Section 139-Enlarging the scope	212
121.	Revised return - Section 139(5)	213
122.	Guidelines for the empanelment of auditors under section 142(2A)	213
123.	Special audit - section 142(2A)	214
124.	Hardship arising out of the Apex Court’s decision in Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)	216
125.	Mistake apparent from record	217



The Institute of Chartered Accountants of India

126.	Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Sec 155(14) has elapsed) demanded by the Government authorities at a later date	218
CHAPTER-XVII	COLLECTION AND RECOVERY OF TAX	
127.	Different Methods of accounting followed by the deductor and deductee	223
128.	Need to strengthen the validation system of FORM 26AS	225
129.	Applicability of TDS on genuine provisions on estimate basis without bills	226
130.	Synchronization of Section 192 & Section 15 of Income Tax Act	228
131.	TDS under Section 194A Interest payments to NBFC	228
132.	Payment of hire purchase installments under an hire purchase agreement applicability of tax deduction u/s 194A or 194I	229
133.	Section 194C-Defination of the term "work"	230
134.	Section 194H-Deduction of tax at source from income in the nature of commission or brokerage	230
135.	Clarification regarding TDS on Commission to a partner under section 194H read with section 40(b)	230
136.	Section 194I-TDS on rental income	231
137.	Section 194IA-TDS on transfer of immovable property	232
138.	Fees for professional or technical services- Section 194J	234
139.	Section 194J Claim of TDS on income declared on cash basis	235
140.	Section 194LC-Income by way of interest from Indian Company	236
141.	TDS on interest on NRO account	237
142.	Section 195-Time limit for - Issuance of "general or special order"	237
143.	Validity of Certificate issued u/s 197	238
144.	Section 200- Furnishing of TDS returns	238
145.	Mismatch on account of punching of data	239
146.	Provision for rectification and appeal of intimation under section 200A	240
147.	TDS demand u/s 200A	241
148.	Time limit for TDS assessments of payments made to non residents	242
149.	Consequences of failure to deduct or pay TDS- section 201(1A)	242
150.	Section 206AA – Requirement of furnishing of PAN for deduction of tax at source	243
PART C	ADVANCE PAYMENT OF TAX	
151.	Section 208-Revision of Limit of advance tax	246
PART F	INTEREST CHARGEABLE IN CERTAIN CASES	
152.	Interest u/s 234C for newly formed Firms and Companies	247
PART G	LEVY OF FEE IN CERTAIN CASES	
153.	Fees under section 234E	248



The Institute of Chartered Accountants of India

CHAPTER XIX-A	SETTLEMENT OF CASES	
154.	Once in life time Settlement Commission	253
155.	Section 245A Settlement Commission	253
156.	Restoration of the provisions of erstwhile Section 245E	254
CHAPTER XIX-B	ADVANCE RULINGS	
157.	Introduction of Advance ruling for residents	259
CHAPTER XX	APPEALS & REVISION	
158.	Delay by Assessing Officer in issuing Order giving effect to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order	263
CHAPTER XX-B	REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX	
159.	Inclusion of payments and receipts made through the modes like RTGS, NEFT, EFT and ECS as valid modes of fund transfers under sections 269SS and 269T of the Income-tax Act, 1961	267
CHAPTER XXI	PENALTIES IMPOSABLE	
160.	Initiation of penalty proceeding in every assessment order	271
161.	Penalty where search has been initiated- Section 271AAB	272
162.	Rationalization of Section 271D & 271E	272
163.	Penalty for failure to furnish TDS/TCS statements-Section 271H	273
CHAPTER XXIII	MISCELLANEOUS	
164.	Signing of notices under Section 282A	277
165.	Omission of section 282B-Document Identification Number	277
166.	Section 285BA(3) Information to be furnished in the Annual Information Return	278
PART III	SUGGESTIONS RELATING TO THE PROVISIONS OF WEALTH-TAX ACT, 1956	
167.	Taxable Wealth – to exempt motor cars	283
168.	Increment in Cash Limit	284
169.	Enhancement of the Basic Exemption limit	285
	ANNEXURE I	286
	ANNEXURE II	289

PART I

**SUGGESTIONS FOR IMPROVING TAX
ADMINISTRATION AND COMPLIANCE**





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
1.	<i>Definition of the term "accountant" in the Direct Taxes Code, 2013</i>	<p>The Institute of Chartered Accountants of India (ICAI) is a statutory body established by the Chartered Accountants Act, 1949 for the regulation of the profession of Chartered Accountants in India exclusively form to regulate in the matter of accounts on audit and its professionals. The ICAI has achieved recognition as the premier accounting body in India and today it is the second largest accounting body in the world.</p> <p>However, the proposed definition of "Accountant" under clause 320(2) of the Direct Taxes Code, 2013 which includes the "Cost Accountants" and "Company Secretaries" has been a cause of major concern to the entire profession. Before the Code enacts into a Bill and then law of the land, we would like to place on record our anguish and concern not only for the profession but for the country as a whole since issuance of audit certificates by persons who have not authorized to do so by the Acts of Parliament.</p> <p>With regard to the definition of the term "Accountant" in the Direct Taxes Code Bill, 2010, the Standing Committee had made the following observations and had suggested widening of the definition of the term "Accountant" on the request made by ICSI and ICWAI:</p> <p>"17.9 The Committee observed that the Ministry's reasoning for</p>	<p><i>Difference in scope of service of CA, CS and CWA</i></p> <p><i>a) Section 2(2) of the Chartered Accountants Act, 1949 permits a chartered Accountant to conduct a financial audit or issue certificates based on financials of an assessee.</i></p> <p><i>b) Section 2(2) of the Cost and Works Accountant Act, 1959 restricts the domain of services of cost accountant to services relating to costing or auditing of cost accounting and related statements only. A Cost Accountant is in no case eligible to conduct a financial audit. The argument that such activities can be included in the residuary clause also will not hold good since residuary clause cannot go beyond the main function like a doctor cannot be called to do the job of an advocate.</i></p> <p><i>b) The Company Secretaries Act, 1980 restricts the domain of services of Company Secretary to secretarial services relating to Companies only. A Company Secretary is in no case eligible to conduct a financial audit or issue certificates based on accounts of a company or any other assessee. In fact the Income tax Act covers a wide range of assessees other than companies also like individuals, HUF, firms, Co-operative societies and so on.</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p><i>non-inclusion of related professionals in the definition of accountant is a very strict construction of the term. In the view of the Committee, the suggested amendment may provide the Small and Medium Enterprises (SMEs) a wider and cost effective scope for selection of professionals and will be an important initiative towards simplified tax compliance regime. The Ministry may therefore re-consider the suggestion to widen the scope of the definition of "accountant".</i></p> <p>Observations of the Ministry of Finance</p> <p>Although, the Institute of Cost Accountants and Institute of Company Secretaries have suggested inclusion of terms "Cost Accountant" and "Company Secretary" in the definition of "accountant", the Ministry of Finance had not accepted their suggestion on the ground that</p> <p><i>"an accountant for the purposes of tax matters is required to deal with all financial matters and audit all financial ledgers, books, records and statements of a company or firm etc whereas a cost accountant deals primarily with estimates of cost for projects and monitoring the project to ensure that these are within the budget. Therefore, a cost accountant may not have the expertise to deal with all the financial statements and matters.</i></p> <p><i>Further, the question here is not of giving privilege to any particular</i></p>	<p><i>There is no doubt that ICAI is a premier body formed by MCA only to train chartered accountants to gain expertise in accounting and auditing ICAI. There is much more which can be elaborated like difference in the focus of the syllabi on the basis of which expertise is tested, effective steps taken by ICAI to ensure the quality of audit, guidance provided by ICAI in the field of auditing and accounting and the like. However, it is felt that the very fact that the mother Act itself does not allow the Cost Accountants and Company Secretary to conduct audit is good enough ground to convince one that the definition of "Accountant" does not require any change.</i></p>



The Institute of Chartered Accountants of India

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		<p>profession rather the most suited profession for dealing with the matters relating to direct taxes has to be assigned the work. Accordingly, the suggestion is not acceptable.</p> <p>Under clause 304(3) (F) of the DTC, the Board may prescribe any person with specified educational qualification to act as an authorized representative. The same procedure is followed under the current Act. Accordingly, this will be considered at the time of framing of subordinate legislation.”</p> <p>As per the Report of the Standing Committee on Finance on Direct Taxes Code Bill, 2010 the Ministry of Finance had protested this change. We, by way of our letter dated 16-05-2012 had appreciated the stand taken by the Ministry of Finance in this regard. A copy of the same is enclosed for your reference. Since the provisions of the proposed Direct Taxes Code are not in alignment with the view of the Ministry of Finance, it is difficult to understand the reason of change of opinion of the Ministry of Finance.</p> <p>Recognition of all three professionals by the Companies Act, 2013</p> <p>Audit of Financial Accounts is the exclusive domain of chartered accountants is a well known fact and is even recognized by the Companies Act, 2013(as also the erstwhile Act of 1956). Section 141(1) clearly provides that a person shall be eligible for</p>	



The Institute of Chartered Accountants of India

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		<p>appointment as an auditor of a company only if he is a chartered accountant. While considering the domains of other two professionals, section 143(14) of the said Act also provides that the provisions of section 143 shall mutatis mutandis apply to:</p> <p>(a) the cost accountant in practice conducting cost audit under section 148; or</p> <p>(b) the company secretary in practice conducting secretarial audit under section 204.</p> <p>It may be noted that the Ministry of Corporate affairs is very clear about the domains of all the three professionals and has, thus, assigned the right task to the right professional who are suppose to carry out the assigned task in a professional manner.</p> <p><i>Implications of Conduct of audit by non-chartered accountants</i></p> <p>Conducting of tax audit by non-chartered accountants having limited knowledge of the principles of accounting, auditing and tax procedures thereof would result into complexities not only for the assesseees as also for the Government including but not limited to inaccurate computation of income, leading to leakage of revenue. While processing the data provided by the Income-tax Department in respect of tax audits conducted by chartered accountants, it was observed that a number of tax audit reports were filed by the assesseees by quoting wrong membership details of the</p>	



The Institute of Chartered Accountants of India

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		<p>Chartered Accountants. The fact of alleged misuse of membership details of chartered accountants was also reported to CBDT vide letter no. DTC/2011-12/Rep-07, dated 16th December, 2011 and subsequently vide Letter no. DTC/2012-13/Rep-09, dated 15th June, 2012. As per our knowledge, action has been taken against those assesseees who avoided getting their accounts audited and tried escape tax. The Ministry may be very well aware of the tentative figure of the involved revenue leakage. Such cases are a LIVE examples of the implications of getting the tax audit done by "Cost Accountants" and "Company Secretaries" who do not have expertise to do the same and are thus as good as fake audits.</p>	
2.	First Schedule – Surcharge	<p>The Finance Act, 2013 levied a surcharge@10% on an individual with total income exceeding Rs.1 crore and for corporate (domestic companies), surcharge@10% only if, the total income exceeded Rs.10 crores. While levying this additional surcharge the Finance Minister in his speech had mentioned that the additional surcharges will be in force for only one year, that is Financial Year 2013-14.</p>	<p><i>Since the intent of the Ministry of Finance, while introducing these additional surcharges, was to limit it only for the financial year 2013-14, these surcharges should be abolished from the financial year 2014-15 and onwards</i></p>
3.	Rates of Taxation	<p>With regard to rates of taxation for individual and HUFs, the Parliamentary Standing Committee on Direct Taxes Code had observed the following: "When the present Income Tax Act</p>	<p><i>In line with the recommendations of the Standing Committee on Finance on DTC and for the reasons mentioned therein, the following tax slabs are suggested:</i></p>



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		<p>was enacted way back in 1961, the per capita income of this country was extremely low. During the course of five decades of the working of the Income Tax Act, the national per capita income has increased manifold, widening the scope for taxing various incomes. At the same time, the absolute number of poor has also increased manifold, warranting much larger government outlays. The aspirations of the people for better living standards and their expectation from government to deliver the same has also simultaneously increased. It is therefore, necessary that these challenges in a growing economy and a developing society are kept in mind, while formulating a new Direct Tax Law.</p> <p>84. A Direct Tax by definition is a levy on the income A Direct Tax by definition is a levy on the incomes, profits and wealth earned and generated by individuals and entities. Thus, a direct tax by its very nature and scope cannot be imposed on everybody. It has necessarily to be a focussed levy which should reflect and tap the rising incomes and prosperity in a growing economy. The tax rates and structure should therefore be tailored in a way that will ensure sufficient buoyancy and dynamism. As the economy expands and diversifies, the tax policies cannot remain caught in a time-warp. Ways and means of augmenting revenue would have to be found not merely by broadening the base but also by deepening the trunk to tap both potential as well as concealed incomes and wealth. In this regard,</p>	<table border="1"><thead><tr><th data-bbox="990 336 1187 380">Slab (lakhs)</th><th data-bbox="1190 336 1386 380">Tax rate</th></tr></thead><tbody><tr><td data-bbox="990 384 1187 428">0-3</td><td data-bbox="1190 384 1386 428">Nil</td></tr><tr><td data-bbox="990 432 1187 476">3-10</td><td data-bbox="1190 432 1386 476">10%</td></tr><tr><td data-bbox="990 480 1187 525">10-20</td><td data-bbox="1190 480 1386 525">20%</td></tr><tr><td data-bbox="990 529 1187 573">beyond 20</td><td data-bbox="1190 529 1386 573">30%</td></tr></tbody></table>	Slab (lakhs)	Tax rate	0-3	Nil	3-10	10%	10-20	20%	beyond 20	30%	
Slab (lakhs)	Tax rate													
0-3	Nil													
3-10	10%													
10-20	20%													
beyond 20	30%													



The Institute of Chartered Accountants of India

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		<p>there are three distinct categories of income, which require to be tapped or brought to book, namely (a) untaxed/non-taxed income; (b) potential income; (c) concealed income.</p> <p>85. On the whole, the Committee would expect the tax policy and procedures to be fair, just and equitable, bringing fiscal stability at least over the medium-term, obviating the need to make changes in rates structure etc. during every Budget. Fiscal stability together with certainty will no doubt go a long way in sustaining economic growth and development. Needless to say, governance standards would, in the final count, determine the efficacy and the credibility tax policies carry with taxpayers.</p> <p>86. The Committee find from the information made available that tax collected in the income slab of 0-10 lakh is Rs. 21,094 crore and the total number of taxpayers is about 2.76 crore; while the corresponding figures for the income slab of 10-20 lakh is Rs. 10,185 crore with only 3.35 lakh taxpayers; the same for the more than 20 lakh income slab is Rs. 53,170 crore tax collected with a mere 1.85 lakh taxpayers. The Committee further find that in the income slab of 0-2 lakh, the number of taxpayers is around 2.02 crore, which decreases to 56.73 lakh in the next income slab of 2-4 lakh. With regard to the percentage of taxpayers in different income slabs, it is 89% (0-5 lakh), 5.5% (5-10 lakh), 4.3% (10-20 lakh) and 1.3% (above</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>20 lakh). On the corporate tax side, the tax collected in the slab of 0 to 100 crore is Rs. 44,016 crore, Rs. 23,421 crore in 100-500 crore slab; and Rs. 54,558 crore in the above 500 crore slab. The extent of revenue foregone for the above slabs has been found to be Rs. 23,200 crore, Rs. 11,779 crore and Rs. 27,895 crore respectively. The figures mentioned above only seek to confirm the view that the tax structure and the prevailing tax regime is regressive – both for individual as well as corporate tax payers. The Committee desire that the character of the tax regime should change and it should be made more progressive. This would entail greater relief for small taxpayers – both individuals and corporate and moderately higher rates for taxpayers in the higher bracket.</p> <p>87. The Committee find it astonishing that almost 90% comprise of individual taxpayers in the 0-5 lakh income slab without commensurate tax yield; which translates into nearly 3 crore assesees. In a belated recognition of this paradox, the Department has exempted taxpayers in the lower income slab (0-5 lakh) from filing tax returns, thereby reducing the Department’s processing burden. The Committee find it absurd that the Department should diffuse their energies and spread their resources thin over handling such a large number of individuals with low income potential. The argument that more taxpayers have to be brought within the tax net for widening the tax base can hold water only to the extent that this</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p><i>approach brings in more taxpayers and tax revenue from the higher income brackets, rather than simply adding to the numbers in the lower segments.</i></p> <p><i>88. Keeping in view the inflationary trends in the economy and the imperative to leave more disposable incomes in the hands of individual tax payers, particularly those in the lower income bracket, the Committee would recommend that the tax slab attracting „nil“ rate, that is, full exemption from tax on income should be raised to three lakhs from the proposed two lakhs. Higher exemption limit may be considered for women and senior citizens. The age for senior citizens should be relaxed from 65 years to 60 years. As reasoned earlier, higher exemption limit would go a long way in minimising the compliance and transaction costs of the Income Tax Department, which can now focus their attention and re-orient their resources on the higher income groups, untaxed or concealed incomes, and categories and sectors that are avoidance or evasion prone. The revenue gap, if any, could be easily bridged by way of stringent measures to curb and bring to book unaccounted money and through realisation of huge tax arrears and by way of savings from the proposed transition to the investment-linked incentive / exemption regime.</i></p> <p><i>89. Thus, in the light of reasons cited above and in pursuance of the well-recognised and widely accepted rationale of moderate tax rates inducing better tax compliance and</i></p>	



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion										
		<p>with a view to giving some relief to the small tax payers, the Committee would recommend the following revised tax slabs :</p> <table border="1" data-bbox="574 478 964 716"> <thead> <tr> <th data-bbox="574 478 808 527">Slab (lakhs)</th> <th data-bbox="808 478 964 527">Tax rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="574 527 808 575">0-3</td> <td data-bbox="808 527 964 575">Nil</td> </tr> <tr> <td data-bbox="574 575 808 623">3-10</td> <td data-bbox="808 575 964 623">10%</td> </tr> <tr> <td data-bbox="574 623 808 672">10-20</td> <td data-bbox="808 623 964 672">20%</td> </tr> <tr> <td data-bbox="574 672 808 716">beyond 20</td> <td data-bbox="808 672 964 716">30%</td> </tr> </tbody> </table>	Slab (lakhs)	Tax rate	0-3	Nil	3-10	10%	10-20	20%	beyond 20	30%	
Slab (lakhs)	Tax rate												
0-3	Nil												
3-10	10%												
10-20	20%												
beyond 20	30%												
4.	<p>Foremost requirement - Respect the "Taxpayer"</p>	<p>The revenue of the Government of India is sourced through taxation, be it direct taxes/indirect taxes at central / state level. Even though the "taxpayer" is the only source of revenue, he is not respected by the Department. In fact, he is harassed and looked upon with suspicion. The shift of the Department from manual to electronic and formation of CPC, Bengluru and CPC(TDS) is remarkable, but the taxpayers are still facing issues and feel harassed as they are unable to find solution to system generated issues. Taxpayers who share a part of their income with the government as a partner in nation building are not getting their due respect. Today the taxpayer wants to comply with legal requirements and wants a hassle free life. However, still they are viewed as tax evaders. In all private organizations, the client who is the source of income is highly valued. In fact priority services are provided to members who add on more to the income of the organization. The government of India should treat the "taxpayer" as</p>	<p><i>The taxpayers should be given due respect and be treated as a client. In fact there should be a system where the taxpayer paying tax, beyond a certain limit, is provided priority services. Like the taxpayer contributing tax more than 25 Lakhs may be issued a Gold card, like wise taxpayers contributing more than 1 crore may be issued a Platinum card. These cards may have certain services attached to them like home service for preparation or renewal of AADHAR card / ration card/ driving license/passport etc and the like. For other taxpayers, services like online grievance portal, instant posting of all related orders in the account of the assessee, proper sitting arrangements in the Income tax offices and the like be provided. This attitude towards taxpayers, if adopted, would undoubtedly improve tax compliance thereby increasing the tax base.</i></p>										



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		its client since he is the only source of revenue.	
5.	<i>Targets for collection of taxes-Not essential</i>	India adopts a progressive system of taxation where the tax rate depends on the level of income earned during a financial year. Taxes paid by the taxpayers are utilized for the betterment of the nation as a whole. Since a majority portion of direct taxes is paid to the credit of the Government through TDS and advance tax, the possibility of evasion of tax gets meager in the private sector. Also, today the assessee wants to voluntarily comply with the existing laws to avoid any hassles. In such a scenario, it is difficult to understand as to why targets are set for Assessing Officers for collection of tax. The Government is not a profit making organization. It belongs to the people of India, works for the people and is formed by the people of India. In order to achieve the yearly targets, all means, fair and unfair, are being adopted. There have been instances which have been reported to us as to how, in order to complete targets the genuine assesses are being harassed. This creates an unhealthy environment. One cannot enforce on collection of taxes when there is no income and then the taxpayer has to go round and round to get a refund of the extra taxes paid by him.	<i>Since a majority portion of direct taxes is paid to the credit of the Government through TDS and advance tax, it is suggested that no targets should be set by the Department for collection of taxes. In fact, internal mechanism is to be developed to ensure adherence of the timelines mentioned in the Citizens charter of the Department with regard to performance of services and adherence to the timelines should be made as a part of performance appraisal of the concerned.</i>
6.	<i>Verification of all income-tax returns</i>	There are classes of persons who are filing income tax returns but are not declaring their income properly. Either the income is	<i>Since non verification of admissibility of basic deductions provided in sections 80C, 80D and 24(b) have huge</i>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p>suppressed or various deductions are being claimed which are not legally permissible. With the increase in the work of the Department it is not practicable to scrutinize each and every return. Taking into consideration this aspect the person filing the return takes a calculated risk. Further, basic deductions provided by the Act like section 80C (Rs.1,00,000), section 80D (15,000), section 24(b)(Rs.1,50,000) being claimed by the individuals and HUFs, in large numbers, have huge revenue impact. To check on the admissibility of the claim for deduction, no proof of investment is called for by the assessee. Today as per e-filing website there are 2.79 crore assesseees who have filed return for ITR-1,2,3,4 and 4S online for the AY 2013-14 and are thus expected to have an income of Rs.5,00,000 or more. Considering the slab rate of 10%, the minimum revenue impact is $2,70,000 \times 10.3\% \times 2.79$ crore is approximately Rs. 77600 crores. In case the applicable rate of tax is 20.6%, the revenue impact is approx. 155180 crores. In case the applicable rate of tax is 30.9%, the maximum revenue impact is Rs. 232770 crores.</p> <p>To address this, it is important that all the returns filed are thoroughly checked and cross-verified with the information collected through AIR and other sources by the Department. This process is entirely different from the scrutiny process. In this verification, not</p>	<p><i>revenue impact, it is imperative to have a certification /verifications of all claims of deductions under section 80C, 80D, 24(b) and the like. In this verification, not only the arithmetical accuracy but the admissibility of the claim regarding the expenditure incurred, income earned or investment made on the basis of the evidence collected from various sources will also be verified. Since this work is voluminous, the same will also be required to be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas.</i></p> <p>(SUGGESTION TO IMPROVE TAX COLLECTION)</p>



The Institute of Chartered Accountants of India

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		<p>only the arithmetical accuracy but the admissibility of the claim regarding the expenditure incurred, income earned or investment made on the basis of the evidence collected from various sources will also be verified. Since this work is voluminous, the same will also be required to be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas. Although the chartered accountants, through whom approx 85% of the returns are filed, ensure the correctness of the claim, the law does not recognizes the same. Thus, the chartered accountant is questioned by the assessee, when documents are asked for. In the interest of the revenue, it is imperative to have a certification of claims of deductions under section 80C, 80D, 24(b) and the like.</p> <p>This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware that the return being filed would be subject to a verification process and he cannot afford to take the liberty of making adjustments which are legally impermissible.</p>	
7.	TCS @1% on sale of all motor vehicles	India was the sixth largest motor vehicle/car manufacturer in the world in 2012. The sales of motor vehicles have increased manifold times since 2009. In fact the domestic motor vehicle sale that has been recorded in the year	<i>In order to prevent evasion of taxes, Tax @1% of ex-showroom price should be allowed to be collected by the seller of high value cars, say, cars having value above Rs. 10 Lakhs, from the ultimate consumer. The</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>2013 is 18.10 million units in which comprise of:</p> <p><i>Passenger Vehicles:</i> 1.81 million units,</p> <p><i>Commercial Vehicles:</i> 0.69 m,</p> <p><i>Two-wheelers:</i> 14.36 m,</p> <p><i>Three-wheelers:</i> 0.50 m</p> <p>It may have been noticed that the number of motor vehicles cars owned are generally not commensurate with the income of the person offered to tax. Further, possibility of use of black money to purchase high value cars also cannot be ruled out.</p> <p>In order to track information about the source of the income of the person seller of high value cars, say motor vehicles of value above 10 Lakhs, may be required to collect tax at source @1%. The assessee may, however, be allowed to take credit of tax so collected in his return after furnishing details of source of income in the relevant ITR form. The procedure followed in respect of section 206(ID) i.e. TCS on jewellery and bullion may be adopted.</p>	<p><i>consumer may however, be allowed to take credit of tax so collected in his return of income after furnishing details of source of income in the relevant ITR form. The procedure followed in respect of section 206(ID) i.e. TCS on jewellery and bullion may be adopted.</i></p> <p><i>(SUGGESTIONS TO INCREASE THE TAX BASE)</i></p>
8.	<i>Forms of Income tax return to incorporate details of tax payments made under other legislations</i>	<p>Income tax return forms are such that they have reasons to capture some Information about other tax payments like service tax, VAT etc. The return form should be made more elaborate so as to give comprehensive information about the other indirect taxes paid.</p> <p>Thereafter, the said information be shared with the relevant Department of the Government for</p>	<p><i>It is suggested that the forms of income tax shall incorporate all the relevant details of tax payments made under other legislations like central excise, VAT, service tax etc.</i></p> <p><i>(SUGGESTIONS TO INCREASE THE TAX BASE)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		verification. This will ensure that the data being reported by the assessee matches with the data provided by him in other Departments. In the long run, it will improve the quality of the data being received in the return forms as the assessee will not take the risk of mentioning the wrong data.	
9.	<i>Consolidation of multiple reports to be issued by Chartered accountants in a single format</i>	As per the current provisions, an assessee has to file multiple audit reports in different formats as per the statutory requirements. For a simplified tax regime, a single audit form should be introduced which will incorporate or consolidate multiple audit reports/certificates required to be issued under various sections of the Income-tax Act, 1961.	<i>Multiple reports of audit/certificates of chartered accountants be compiled and a single form of audit/certificate be prepared. The said format may have multiple annexures i.e. existing formats in different sections.</i> <i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i>
10.	<i>Generation of Form No. 15G, 15H, 60 and 61 through system</i>	Form No.15G/15H is a form of declaration that has been prescribed for those persons who desire to receive certain specified income without deduction of tax at source. These forms can be used only if the aggregate income of the person making declaration does not exceed the maximum amount not chargeable to tax. Form No.60/61 are used by persons who do not have a Permanent account number and who have entered into transactions specified under Rule 114B of the Income-tax Rule,1962. The purpose of existence of these	<i>Since there is no central system to locate multiple forms 60, 61, 15G and 15H, filled by a particular person, it is suggested that the filing of the same be made electronic. On the basis of particulars received from these form No, the banks should be mandated to punch the said particulars in the e-form which will generate a unique number. The details so furnished may be then used for analyzing and taking action against those persons who have given false declaration to avoid payment of taxes. This system if put in place will ensure genuine usage of these forms.</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		forms is mainly to avoid inconvenience to senior citizens and other persons whose income chargeable to tax is below the maximum amount not chargeable to tax and those who do not have a PAN. These forms are however being misused, since there is no mechanism to track and control those persons who wrongly fill the form to avoid deduction of tax at source. Today, every branch of a bank collects Form No. 60/61/15G/15H and does not deduct tax at source on FDs having interest below 10,000. This gives a way to the assessee to have FDs in multiple branches with interest below 10000 and escape tax deduction at source by furnishing the relevant form.	<i>(SUGGESTION TO INCREASE THE TAX BASE)</i>
11.	<i>A single ITR form to replace all ITR forms</i>	At present, we have different ITR forms for different assessees which make filing of ITR a cumbersome task. There should be a single form for all the assessees so that filing of return will be done in a simplified & effective manner.	<i>A single ITR form instead of ITR 1,2,3,4,5,6,7 should be prepared. The common fields in all ITR can be clubbed and Income under the various heads of income is restricted in form of Annexures. The assessee should click and fill only the annexure which is relevant for him. This would amount to simplification in true sense.</i>
12.	<i>Procedure for surrender of PAN</i>	In case of firms, who have discontinued their business still have to file return u/s 139(1), since no procedure has been prescribed for surrender of PAN by the discontinued firms. Due to this firms are liable to penalty u/s 271F at any time.	<i>It is suggested that procedure for surrender of PAN & exemption from filing of return of income in respect of Firms having business discontinued, may be prescribed. With this, firms may be saved from penalty u/s 271F.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
			<i>PROVISIONS OF DIRECT TAX LAWS)</i>
13.	<i>Creation of Online grievance portal</i>	<p>At present, no online grievance handling mechanism is in existence to resolve the difficulties being faced by assessee relating to TDS or E-filing of income-tax returns. To enable the assessee to seek early resolution of their queries within a short span of time, it is suggested that an online portal may be created wherein the assessee can post his complain/query relating to his own returns and which are answered by the respective Assessing Officer. The system may have following features:</p> <ol style="list-style-type: none">The query not replied within a specified period of time is escalated to higher authority say Assistant Commissioner, then to Deputy Commissioner and so on according to the hierarchy.Once the issue is resolved the assessee should be allowed to reopen his query if he is not satisfied with the response received and has further submissions to make.The assessee should be able to check the status of his grievance online.SMS and email alert may be given at the time of receipt of grievance and at the time of disposal of grievance. <p>In this regard, we wish to mention that the Institute of Chartered Accountants of India is</p>	<p><i>It is suggested that an online grievance portal for speedy resolution of queries of assessee be created. If required, the ICAI would extend its full support in developing the said grievance portal.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		successfully operating an online grievance portal "E-Sahaayataa" to cater to the queries of approximately 10 Lakh students and 2 Lakh members. All the officials of the ICAI are mapped in the portal to ensure that all unanswered grievances are escalated to higher levels. Since the inception of this system in June 2010, ICAI has successfully answered approximately 98,000 queries.	
14.	Extension of last date of Payment of tax due to Public holiday - Circular No. 676 dated 14.01.1994 read with Section 10 of the General clauses Act, 1897	<p>Considering the provisions of section 10 of the General Clauses Act, 1987 the Board had through Circular No. 676 dated 14.01.1994 clarified that if the last day for payment of any instalments of advance tax is a day on which the receiving bank is closed, the assessee can make the payment on the next immediately following working day, and in such cases, the mandatory interest leviable under sections 234B and 234C of the Income-tax Act, 1961 would not be charged.</p> <p>Considering the change in the functioning of the Department, assessee and the banking system in India, it is felt that the said circular needs revision.</p>	<p><i>It is suggested that the Circular No. 676 dated 14.01.1994 be revised in the light of existing scenario. The circular should clearly provide as to whether or not the due date shall be deemed to be extended by one day if the last date is a public holiday.</i></p> <p>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</p>
15.	Issues arising from applicability of Companies Act, 2013: a) One person Company (OPC):	<p>Section 2(62) of the Companies Act, 2013 has introduced the concept of "One Person Company" which means a company which has only one person as a member. Section 2(31) of the Income-tax Act, 1961 which defines person has to be amended to include</p>	<p><i>It is suggested that OPC should be treated like any other company for taxation purposes. The concept of separate legal entity of OPC should be followed for Income tax and Wealth tax both. However a specific clarification may be inserted in the income tax act as</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>within its ambit an OPC.</p> <p>Section 2(68) of the Companies Act, 2013 defines “private company” to mean a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—</p> <p>(i) restricts the right to transfer its shares;</p> <p>(ii) except in case of One Person Company, limits the number of its members to two hundred:</p> <p>Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:</p> <p>Provided further that—</p> <p>(A) persons who are in the employment of the company; and</p> <p>(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and</p> <p>(iii) prohibits any invitation to the public to subscribe for any securities of the company;</p> <p>From the above it can be inferred that one person company will be required to comply with the provisions applicable to private Limited Company. However, section 18 of the Companies Act, 2013 provides for conversion of</p>	<p><i>to allowability of remuneration paid by OPC to member.</i></p> <p>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		companies already registered from one class to other class under that Act. This implies an OPC can be converted into a Private limited or a public Limited Company provided that conditions are fulfilled.	
	b) Reopening of accounts on Court's/ Tribunal order under section 130 of the Companies Act, 2013:	<p>b) Section 130 of the Companies Act, 2013 provides for now provides for revision of the books of accounts and the financial statements of the Company on application made by the Central Government, the Income tax Authorities, the SEBI and any other statutory regulatory body or authority or any person concerned. Such revision can however be done on an order by a court of competent jurisdiction or the Tribunal to the effect that the relevant earlier accounts were prepared in a fraudulent manner or the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of the financial statements. Before passing the order notice of the same will be given to the Income tax authorities. This revision may, however, give rise to three situations namely, no effect on the profits, higher profits or lower profits. These profits have a direct impact on the computation of income of Companies due applicability of section 115JB of the Income tax Act, 1961. In case the profits are higher, the Department can issue a notice under section 147 of the Income tax Act. The issue will arise where</p>	<p>a) <i>A provision is inserted to provide that in cases where the financial statements have been revised by virtue of section 130 of the Companies Act, 2013, no refund shall be granted in case such revision has the effect of lowering of profits of the company.</i></p> <p>b) <i>A specific provision is required in the Income tax act to take care of adjustments required in taxable income due to revision of accounts. The provision may be in line of Section 155 of the Act.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		the profits were inflated by the company and due to the reopening of accounts, the actual profits are lowered. The company in such case may apply for refund by filing a revised return of income within the time limit prescribed under section 139(5) of the Income-tax Act, 1961.	
	c) Reference of Schedule VI of the Companies Act, 1956 to be substituted with Schedule III of the Companies Act, 2013:	The Companies Act, 2013 provides for the General instructions for preparation of "Balance Sheet" and "Statement of Profit and Loss" of the Company in Schedule III. The references made in the Act to Schedule VI of the erstwhile Companies Act, 1956 are to be substituted accordingly.	<i>Consequential amendments be made in the Income tax Act, 1961 and the Reference of Schedule VI of the Companies Act, 1956 be substituted with Schedule III of the Companies Act, 2013.</i>
	d) Difference in the definition of "related party" in Companies Act, 2013 and Income tax Act, 1961:	The concept of related party is relevant for defining "specified domestic transactions" and "international Transactions" in the Income-tax Act, 1961. The Companies Act, 2013 also defines "covered transactions" and "related party" However, the definition in both the cases is different.	<i>There is a need for alignment in the scope of related parties in Companies Act, 2013 with that of the Income-tax Act, 1961</i>
	e) Depreciation Transition Provisions- Impact on MAT	Sch. II of the Companies Act 2013 requires depreciation to be charged in books of accounts calculated as per new useful life specified in the schedule. Note 7 to part C of Sch II is providing that in case of an asset whose useful life is nil, its carrying amount is to be recognized in opening balance of retained earnings. This means that so much amount shall not routed through P & L statement but shall be adjusted	<i>It is suggested that a specific provision be introduced u/s. 115JB to provide for that so much amount of carrying cost of asset as has been adjusted against opening balance of retained earnings, shall, for the purpose of computing book profit under Sec. 115JB, be allowed as deduction.</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		directly in balance sheet. In case of companies covered by MAT, this shall have an adverse impact in the sense that this much amount shall not be available for adjustment against book profit.	
	f) Amalgamation	a) Sec. 72A of the Act, which deals with treatment of unabsorbed losses and unabsorbed depreciation, in case of amalgamation, is restrictive in its application. Presently benefits of Sec. 72A are available only to company owning industrial undertaking or a ship or a hotel or banking company. Due to this restriction, other sectors namely service sector and real estate sectors are not eligible for benefits in the form of handing over of loss from one company to another.	<i>a) It is suggested that sectoral restrictions u/s 72A may be removed and provisions of this section be made applicable for all the sectors.</i>
		b) Presently MAT credit u/s. 115JAA can not be carried forward by the amalgamated company.	<i>Act needs to be amended so as to allow carry forward of MAT Credit in the hands of amalgamated for remaining number of years.</i>
		c) Section 56(2)(vii)(c)(ii) applies when an individual or HUF receives shares for a consideration which is less than fair market value of the shares by an amount exceeding Rs. 50000. Similar rule apply for a firm or closely held company by virtue of Sec. 56 (2) (vii a). In case of Section 56 (2) (vii a), it has been specifically provided that	<i>It is suggested that a proviso on the lines of clause (vii a) be introduced for the purpose of clause (vii) (c) (ii) also.</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		this clause is not applicable when shares have been received by way of amalgamation covered u/s. 47. No such exclusion is applicable for Section 56 (2)(vii)(c)(ii).	
		d) Companies Act, 2013 has permitted amalgamation of Indian company with foreign company. However exemption from capital gains u/s. 47 of the Income tax act is available only when amalgamated company is an Indian Company.	<i>Clause (vi) of Section 47 need to be amended in order to make amalgamation with foreign company also a tax neutral transaction. Similar amendment is required in clause (vii) of Section 47 also, so that shareholders are not taxed when shares of amalgamated company are received and amalgamated company is not an Indian company.</i>
	g) Amalgamation and Demergers – Limitation on powers for assessment of cases dealing with Amalgamation and Demergers effected under the new Companies Act, 2013.	In recent times, tax litigation in relation to amalgamation and demerger has increased many folds. Certain examples of such litigations are as under: a. Tax benefits of amalgamation and demerger have been denied on the ground that the assessee has not fulfilled the conditions stated under section 2 (1B) in case of amalgamation and section 2 (19AA) in case of demerger; b. Litigation as to whether the transaction is in the nature of amalgamation, demerger or slump sale under the Income Tax Act; c. In certain cases, the Tax department has alleged that the scheme was a Tax	<i>Therefore, since now under the Companies Act, 2013, at the time of approval of Scheme, adequate representation has been given to the Income Tax department, corresponding amendments should be made in Income-tax Act, 1961 (may be by way of introduction of a separate chapter or by introducing new section dealing with these kind of assessments) to the effect that the tax issues under the Income Tax Act, 1961 relating to amalgamations/demergers in the hands of the transferor company, transferee company and the shareholders of transferor/transferee company should be examined and</i>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p>avoidance device;</p> <p>d. Issues relating to carry forward of unabsorbed losses in the hands of transferee company, availability of credit for TDS and advance tax paid by the transferor company on behalf of transferee company, etc.</p> <p>e. In certain cases, the AO has invoked provisions of Section 28(iv) in the hands of amalgamated company on the ground that the amalgamated company has acquired Reserve & Surplus from its amalgamating company under the scheme of amalgamation. The same was considered as a perquisite by the AO and taxed under section 28(iv) of the Income Tax Act after the scheme has been approved by the High Court.</p> <p>Now, under Section 230(5) of the Companies Act, 2013, it is mandatory for the companies to send a notice of amalgamation and demerger to the income-tax department. Under the old Companies Act, 1956, such notice was not mandatorily required. Hence, now, such notices would ensure that the income tax department can make a representation in relation to the amalgamations and demergers before the same is approved.</p>	<p><i>adjudicated by the tax department at the stage of making representation itself. In such a case, the Assessing Officer shall not be allowed to re-examine and re-adjudicate the issues relating to amalgamation or demerger at the time scrutiny assessment or reassessment.</i></p> <p><i>The said amendment would have following positive effects:</i></p> <p><i>a. Reduction in tax litigation in respect of amalgamations/demergers;</i></p> <p><i>b. The Assesseees would be saved from hardship of the double scrutiny – one at the time of filing of the scheme and second at the time of assessment.</i></p> <p><i>c. Certainty as to the tax treatment in relation to amalgamations and demergers, which will lead improvement of investors' sentiment;</i></p> <p><i>d. Safeguard of shareholder's interest since they would be aware about potential tax exposures to them and the company in respect of the amalgamation and mergers and would consider the same while voting in respect of the same;</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
16.	Corporate Social Responsibility Costs	Corporates are currently involved in various areas of social responsibility/community development as part of nation building. Further, the concept of Corporate Social Responsibility Costs has been introduced under Companies Act, 2013. The expenditure is mandatory in its nature and as such it is a statutory levy. Accordingly it deserves tax deduction. Even though it may be covered under Section 37 it deserves for a specific section in Section 36. Allowing tax deduction may encourage corporate to incur expenditure more than minimum prescribed limit. Providing suitable tax incentives in respect of such Corporate Social Responsibility Costs to accelerate the process and to ensure that the country can reach the goal of being a developed nation in the near future is the need of the hour.	<p><i>It is suggested that:</i></p> <p>a) a deduction of the expenditure on community / social development (both capital and revenue) be introduced, specifically covering critical areas like education, health, animal husbandry, water management, women empowerment, poverty alleviation and rural development.</p> <p>b) Even in cases where a company has its own trust or foundation, the deduction in respect of expenditure incurred for CSR activities should be allowed.</p> <p>c) Such expenses, however, should be subject to a limit say 5% of total income.</p> <p>d) CSR expenditure is allowed by way of donation to Prime Minister Relief Fund/ Trust registered u/s. 80G/ associations approved u/s. 35AC . If deduction of CSR expenditure is not allowed , this shall be discriminatory for those corporates, who may like to carry out CSR activities on their own.</p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
17.	Differential Stamp duty charges being paid by CA's	For representing the client, an advocate is being charged a fee of Rs.5/- per Letter of Authority while a Chartered Accountant has to pay	<p><i>In order to bring uniformity in Court fees for both Chartered Accountants & Advocates for their representing the client</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	and Advocates on letter of authority for representing the client	Rs.100/- per Letter of Authority. In Maharashtra, in respect of representing the client by Chartered Accountants, the Court fees is governed by the provisions of Bombay Stamp Act, according to which the Letter of Authority must be accompanied by a Court fee of Rs.100/- or a stamp paper valued Rs.100/-	<i>before Income-tax Authorities, section 288 which provides "appearance by authorized representative" should be amended to provide for the fees to be charged for authorisation.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
18.	Gaps in electricity generations	In order to provide Environmental friendly solutions and Low cost availability of electricity to end user, alternate & clean energy resources may be promoted more by way of additional exemptions/incentives if, the project gets completed on time.	<i>It is suggested that concessions or additional tax benefits may also be provided where a new building (resident/ commercial/ hotel etc) installs a solar energy devices & rain harvesting instruments.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
19.	Allowability of Interest paid under Income-tax Act, 1961:	Presently, interest paid by the Government to an assessee is chargeable to tax. However, interest paid by the assessee to the Government under various sections is not allowed as deduction while computing the total income. Interest paid by the assessee is for the use of money by him and is compensatory in nature.	<i>Interest paid by the assesseees to the Government under various sections of the Income Tax Act should be allowed as deduction in computing total income. If the assessee does not have business income, interest should be allowed under the head 'Income from other Sources'.</i> <i>Alternatively, the interest received by the assessee on refund should be exempt from tax.</i>
20.	<i>Issues regarding PAN allotment</i>	For filing of return, it is mandatory to have PAN.A person applying for PAN has to give his details in a prescribed form & the same will be allotted to him by the Income Tax Department. Earlier, when the	<i>It is suggested that :</i> <i>a) The person entrusted with the work of verification should possess sufficient knowledge & understanding of the provisions of the</i>



The Institute of Chartered Accountants of India

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		<p>assessee identification system was based on "GIR Number" i.e. "General Index Register Number" that used to be allotted, "Free of Cost", by the concerned Income Tax Officer who had a jurisdictional authority to assess the assessee.</p> <p>Later on this was switched over to the era of "Permanent Account Number", under the authority of new Section 139A, substituting the old one, by Finance Act, 1995, with effect from 1-7-1995 and by insertion of New Rule 114, by replacing the old Rule 114, with effect from 1-4-1976.</p> <p>Due to the some reasons, this function of receiving applications and allotment of Permanent Account Number and issue of PAN Card transferred to NSDL. With this switch over, now the applicants were required to pay requisite amount, as prescribed by the authorities, along with the PAN application.</p> <p>Making an application for allotment of the Permanent Account Number and incurring "COST" for that is "unfair and unjust" to the applicant. It is the proprietary/statutory function of the Income Tax Department to allot the same "Free of Cost", as the same has been the normal part of its function, empowered by the Income-tax Act, 1961.</p> <p>Moreover, there are some hardships being faced by the persons applying for PAN. One of the hardships is that the allotment</p>	<p><i>Income-tax Act so as to complete the assigned work in a timely manner.</i></p> <p><i>b) If the application of the applicant is withheld by NSDL, NSDL should inform the applicant the reasons thereof.</i></p> <p><i>c) If there are any queries/doubts regarding details provided in form no. 49A, NSDL should clarify the same with the applicant.</i></p> <p><i>d) CBDT should fix a time limit for issuance of PAN & delivery of PAN card & also should take appropriate actions against undue delays in allotment of PAN.</i></p>



The Institute of Chartered Accountants of India

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		<p>of PAN is not done in a timely manner. Though there is no time limit prescribed under any of the provisions of Income-tax Act regarding issuing PAN & PAN card but it is essential for the Income Tax Authority to issue PAN & PAN card within a prescribed time period- In the case of The Honorable Calcutta High Court in the case of Chandrakant Kandalal Sheth vs. Union of India & Ors. [255 ITR407] it has been held that three months period can be construed as the maximum time period for issuance of PAN & delivery of PAN card & if the concerned authority finds that PAN cannot be given quickly, it must give the reason therefore at the earliest.</p>	
21.	<i>AIR information in "My Account" facility</i>	<p>Section 285BA requires various entities to furnish Annual information return with regard to specified financial transactions in a prescribed form to the Income tax authorities. In order to bring in more transparency, the AIR information of the assessee may be allowed to be reflected under "My Account" Facility provided by Department in CPC portal. A consolidated view of the transactions entered into by the assessee, would also enable the professionals handling the tax matters of the assessee, to guide the assessee regarding the probable compliance of the relevant provisions of the Income-tax Act with regard to the said transactions, leading to correct payment of taxes.</p>	<p><i>It is suggested that the AIR information of the assessee may be allowed to be reflected under "My Account" Facility provided by Department in CPC portal.</i></p>



The Institute of Chartered Accountants of India

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22.	<i>Applicability of SA -700 on form of audit reports</i>	<p>The ICAI had pursuant to the issuance of the Revised SA 700, "Forming an Opinion and Reporting on Financial Statements", prescribed a revised format of the auditor's report on financial statements.</p> <p>As per SA 700 an auditor shall modify the opinion in the audit report when:</p> <ul style="list-style-type: none">a) the auditor concludes that, based on the audit evidence obtained, the financial statements as a whole are not free from material misstatementsb) the auditor is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement <p>Considering the materiality and the pervasiveness of the effects or possible effects on the financial statements, the auditor may issue a modified report with a:</p> <ul style="list-style-type: none">a) Qualified opinionb) Adverse Opinionc) Disclaimer of Opinion <p>Also, SA 700 requires the auditor to clearly lay down management's responsibility and auditor's responsibility. This revised format has been made effective in respect of audits of financial statements for periods beginning on or after 1st April 2012. Considering the fact that SA700 is applicable to non-corporate entities also, ICAI had suggested certain changes vide its letter No.</p>	<p><i>The suggested draft format of a clean report has been submitted to the Under Secretary (TPL-III), CBDT vide its letter No. ICAI/DTC/2013-14/Rep-25 dated 7th February, 2014. The modifications in the report i.e. qualification, adverse opinion, disclaimer of opinion, may be reported by the auditor accordingly.</i></p> <p>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<i>ICAI/DTC/2013-14/Rep-25 dated 7th February, 2014 to the Under Secretary (TPL-III) in Format of Form No. 3CB so as to enable our members to comply with guidelines issued by its Council.</i>	
23.	<i>Foreign tax credit guidelines</i>	<p>Clause 207 relates to foreign tax credit allowable to an assessee, being a resident in India in any financial year on income which is taxed in India as well as outside India. The said clause further provides that where the assessee is required to pay Indian income-tax in respect of an income which has been taxed in any specified territory or other country with which India has an agreement under clause 291, the foreign tax credit shall be allowed in accordance with the agreement entered into with such specified territory or country. Where there is no such agreement, the tax credit shall be determined at the Indian rate of tax or the rate of tax of the other country, whichever is lower. The credit, in either case shall not exceed the Indian income-tax payable in respect of income which is taxed outside India and the Indian income-tax payable on total income of the assessee.</p> <p>The existing foreign tax credit guidelines are not sufficient to deal with various foreign tax credit issues. Hence, detailed guidelines should be introduced to bring clarity.</p>	<i>It is suggested that detailed & clear guidelines on foreign tax credit should be introduced.</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
24.	Issues arising from Notification No 67/2013, dt 2-9-2013 amending Rule 37BB of IT Rules, 1962 wrt Foreign Outward Remittances- Form 15CA & Form 15CB	<p>Ministry of Finance has recently amended Income tax Rules vide Notification No 67/2013, dated 2-9-2013 with regard to Foreign Outward Remittances and Form 15CA & 15CB. This notification is in supersession of an earlier Notification No 58/2013, dated 5-8-2013.</p> <p>Rule 37BB provides for the method/procedure to be followed while furnishing of information in case any payment is made to non-resident which is chargeable to tax. Notification No. 67/2013, dt 2-9-2013 provides through an explanation a list of 28 payments where there is no need to file form 15CA/15CB. As per the earlier Notification no 58/2013, dated 5-8-13, there were a total of 39 payments in the specified list which were required to furnish information in Part B of the Form No.15CA. Payments which are not there in the new specified list are as below:</p> <p>(i) Advance payment against imports</p> <p>This is a routine payment made by the importers. Non exclusion of such payment from specified list is unnecessarily increasing the compliance burden of the assessee. Further, it may lead to harassment at the time of assessment.</p> <p>(ii) Payment towards imports-settlement of invoice</p> <p>As mentioned above, such</p>	<p><i>Since "Advance payment against imports" and "Payment towards imports-settlement of invoice" are routine payment made by the importers, they may be included in the specified list.</i></p> <p><i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>payment is also made in a routine manner by the importers.</p> <p>Similarly, other payments which were earlier in the specified list of Not No 58/2013, dt 5-8-13 but not included in new specified list of Not No 67/2013, dt 2-9-2013 and thereby increasing the compliance burden of assesses unnecessarily are as follows:</p> <ul style="list-style-type: none">(iii) Imports by diplomatic missions(iv) Payments for surplus freight or passenger fare by foreign shipping companies operating in India(v) Freight on imports - Shipping companies(vi) Freight on exports - Shipping companies(vii) Booking of passages abroad - Shipping companies(viii) Freight on imports - Airlines companies(ix) Payments for life insurance premium(x) Freight insurance - relating to import and export of goods(xi) Other general insurance premium	
25.	Number of Returns and payment schedule should be curtailed	Even in the e-filing era, the assessee are overburdened with the compliances to be made with regard to filing of returns and payment schedules. An assessee is required to file quarterly returns relating to TDS on salaries,	<i>For the convenience of the tax payers it is suggested that the number of returns and payment schedule to be filed by the assessee should be curtailed appropriately.</i>



The Institute of Chartered Accountants of India

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		<p>Quarterly returns relating to TDS on amounts other than salary, and quarterly returns relating to TCS. These are in addition to the Income tax return form which is to be filed on annual basis. Due to errors in the punched data or for some other reason, the assessee is required to file correction statements or revised return which is also a cumbersome process.</p> <p>Apart from this there is a payment schedule to be followed in respect of TDS/TCS, advance tax, Self assessment tax and so on. This is too cumbersome.</p>	<p><i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i></p>
26.	Extension of time limit for filing of TDS Return	<p>As the filing of e-TDS returns is an onerous task, it is very difficult for assessees to collate and compile all the voluminous data/information for filing of TDS returns within 15 days from the end of the relevant quarter. Further, as the payment challans from banks reach the deductors by 10th of the next month, it become all the more difficult to file returns within a short span of time.</p>	<p><i>It is suggested that due date for furnishing of the TDS returns may be extended to 30 days from the end of the quarter instead of 15 days.</i></p> <p><i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i></p>
27.	Challan correction mechanism	<p>Considering the fact that several mistakes were being reported which occurred on account of wrong punching of data in the OLTAS by the banks, the CBDT introduced a new challan correction mechanism for paper based payments of income tax. The said system has been appreciated by the assessees. Since, inadvertent mistakes can occur while paying the income tax online also, it is felt that challan</p>	<p><i>It is suggested that challan Correction Mechanism be made applicable to all types of challans including challans for online payments, payments of wealth tax etc.</i></p> <p><i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i></p>



The Institute of Chartered Accountants of India

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		correction system be made applicable to challans in respect of online payments of income tax also.	
28.	a) Difficulties in obtaining old paper refunds	Presently, the refund, if exceeds Rs. 1 lacs requires approval from the higher authorities. Apart from these, re-issue of old paper refunds, already issued by the department before the implementation of Refund Banker Scheme but not received by the assessee, also requires approval from the higher authorities. The second part of the administrative steps in refund cases have become very cumbersome procedures and at the same time also increases the responsibilities of the higher authorities. Moreover, refunds in such cases often delayed by more than 6 months inspite of furnishing of bank pass book and the indemnity bond by the assessee in support of refund not received by them.	<i>It is suggested that old paper refunds not exceeding Rs.1 lakh, issued by the department and not received by the assessee, may not require approval from higher authorities and must be left to the Assessing Officers for disposal. This will help in reducing the pending grievances of non-receipt of old paper refunds.</i> <i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i>
	b) Refunds not delivered due to change in address	The assessee frequently change their addresses due to several reasons like change in job, marriage etc. However, in majority of cases they are unable to get their refund cheque due to changed address. Even if they disclose the current address in the Income-tax return, the refund cheque often goes to the older address and thus remains undelivered.	<i>To handle such cases, it is suggested that once the return has been processed by CPC, the file should be transferred to respective Assessing Officer, with whom the assessee can interact to resolve the issues in the processing of return, non receipt of refund cheque and so on.</i> <i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	c) Issue of Refunds in case of legal heirs	New set of guidelines can be issued for granting refund of tax to the legal heirs of deceased assesses. Most of the refund claims are pending for several months as the department software (AST) requires Court Order for payment of refund. Minimum period of disposal of order by Court is about 2 years. Obtaining Court Order can be relaxed for refunds not exceeding Rs.50,000/- and refund can be given as per the discretion of the Assessing Officer.	<i>It is suggested that in case of refunds of an amount not exceeding Rs. 50,000 which are payable to legal heirs of deceased assessee, the condition of obtaining Court Order be relaxed and refund be given as per the discretion of the Assessing Officer.</i> <i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i>
	d) Refund amount to be directly paid into the bank accounts of the assesseees	The speed and the amount of refunds that have been granted by the Department in last few years have been commendable. In order to be further be effective and assessee friendly, it is suggested that the refunds in respect of e-filed returns as well as manual returns be issued directly into assesseees bank account within maximum time limit of 6 months from filing of returns. This would solve the problem of undelivered refund cheques and also save on interest which is paid by the Government on delayed refunds.	<i>It is suggested that the refunds in respect of all returns (e-filed returns as well as manual returns) be mandatorily deposited directly into assessee's bank account within maximum time limit of 6 months from filing of returns</i> <i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i>
29.	Audit of TDS returns	A major portion of the revenue by way of income-tax is recovered through deduction of tax at source. For furnishing the information required under revised clause 27 of Form No.3CD, an in-depth verification of the TDS returns is necessary.	<i>It is suggested that an independent audit provision may be inserted to provide for a comprehensive audit of all the TDS returns filed with the Department. Appropriate forms of audit report can be prescribed to certify about the correctness of the quarterly TDS returns. This will enable the Department to rest be assured</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
			<p><i>about the correctness of the TDS returns filed as well as the remittance of the tax deducted at source to the credit of the Central Government.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
30.	Monetary limits in the Income-tax Act, 1961	<p>The monetary limits for all exemptions or deductions were provided long back. In has been long since the same have been revised considering the prevailing inflationary conditions in India. An effort has been made to compile all such monetary limits with the Cost inflation index (CII) of the year in which they were last revised and the CII of the year 2013-14 to arrive at the figure of tentative present limit. The same is given as an Annexure to this memorandum.</p>	<p><i>Considering the Cost inflation Index (CII) of the year in which the various monetary limits under the Income-tax Act,1961 were last revised and the CII of the year 2013-14, an effort has been made to make a comparative statement of the present limit and the figure of tentative limit, had the CII been applied to them, has been prepared. The same is given as an annexure to this memoranda. It is suggested that the present monetary limits be revised upwards appropriately.</i></p>

PART II

**SUGGESTIONS RELATING TO THE PROVISIONS
OF INCOME-TAX ACT, 1961**



CHAPTER I
PRELIMINARY





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
31.	Definition of "amalgamation" in section 2(1B)	<p>The Finance Act, 2012 had amended Sections 47(vii) and Section 2(19AA) of the Income-tax Act. As per the Explanatory Memorandum to the Finance Bill 2012, the purpose of aforesaid amendments is as under:</p> <p><i>In a case where a subsidiary company amalgamates into the holding company, it is not possible to satisfy one of the conditions i.e. the amalgamated company (the holding company) issues shares to the shareholders of the amalgamating company (subsidiary company), since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself.</i></p> <p><i>Similarly, in the case of a demerger there is a requirement under section 2(19AA)(iv) that the resulting company has to issue the shares to the shareholders of the demerged company on a proportionate basis. However, it is not possible to satisfy this condition where the demerged company is a subsidiary company and the resulting company is the holding company.</i></p> <p><i>Therefore, it is proposed to amend the provisions of section 47(vii) and 2(19AA) so as to exclude the requirement of issue of shares to the shareholder where such shareholder itself is the amalgamated company or the</i></p>	<p><i>(a) Since, these amendments are clarificatory in nature and are proposed to remove the conditions which were impossible to fulfill, it is suggested to make them applicable with retrospective effect i.e. from the date when the above conditions were inserted in the said sections i.e. for Section 47 (vii) with effect from 1st April 1967 and for Section 2(19AA) with effect from 1 April 2000.</i></p> <p><i>(b) Section 2(1B)(i) may be amended appropriately to provide that all the property of the amalgamating company or companies (other than assets like shares, debentures etc. held by any amalgamating company or companies in another amalgamating company or companies) before amalgamation becomes the property of the amalgamated company by virtue of amalgamation. Corresponding amendment may also be made in Clause (ii) of section 2(1B).</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

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		<p><i>resulting company.</i></p> <p>Further, section 2(1B) of the Income-tax Act, 1961 provides for the definition of "amalgamation" which, <i>inter alia</i>, states that all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of amalgamation.</p> <p>This may lead to hardship in a case where the two amalgamating companies have cross holdings. In such a case, on amalgamation the shares held by the amalgamating companies in each other are cancelled out and thus the requirement of transfer of all assets to the amalgamated company will never be fulfilled. This seems to be an inadvertent error in drafting and thus needs to be amended appropriately.</p>	
32.	Books of accounts in electronic mode- Section 2(12A)	<p>The existing income tax laws do not specifically clarify or permit the maintenance of books of accounts in electronic form instead of physical books / print outs</p> <p>With the IT and telecom revolution and the consequent digitization in the past decade, the economies globally are moving towards a paperless environment and there is an increasing reliance on the digitized records.</p> <p>Further, as the companies are</p>	<p><i>Section 2(12A) defining books or books of accounts should clearly state that the books maintained in digital form would also be considered as books of accounts for the purposes of the Act. The assesseees may scan the original documents and subsequently be permitted to destroy the same as they would be available only in digitized form.</i></p> <p><i>The permission to maintain the books in electronic form should be given to companies beyond a</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p>increasing in size, the volume of documents generated has increased manifold and there are logistic issues in maintaining the documents such as invoices, contract, ledgers, etc in a physical format.</p> <p>Maintaining books of account in electronic mode, would not only free the precious and ever shrinking office space of the corporates but also ensures better data storage & IT enabled Record management sorting, Indexing, Bar Coding at document & file level to ensure speedy retrieval.</p> <p>It may be noted that Section 6 to Section 8 of the Information Technology Act 2000 permits use of electronic records and use of electronic signature while dealing with Government or its agencies. Thus, Government itself accepts the electronic mode while dealing with it.</p> <p>However, the Section 9 of the said Act does not enforce the electronic form and hence in the absence of a suitable amendment to the Act, it may not be possible to use the electronic records as envisaged by the Information Technology Act, 2000.</p>	<p><i>certain prescribed size & scale of operations. Consequential amendments may be made and rules prescribed, as deemed necessary to provide guidance and check points to prevent misuse.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
33.	a) Section 2(15)- Definition of charitable purpose	a) Though as per section 2(15), "charitable purpose" includes the advancement of any other object of general public utility, however, the advancement of any other object of general public utility would not be a "charitable purpose", if it involves	<p><i>Rs.25 lakhs may be the basic exemption limit, and receipts in excess of Rs.25 lakhs may be subject to tax at maximum marginal rate after deducting the related expenditure.</i></p> <p>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>carrying any activity in the nature of trade, commerce or business or rendering any service in relation to any trade, commerce or business for a cess, fee or any other consideration irrespective of the nature of use or application or retention of the income from such activities.</p> <p>In order to provide relief to the genuine hardship faced by charitable organizations which receive marginal consideration from such activities, the Finance Act, 2010 had provided that the benefit of exemption will not be denied to the institutions having object of advancement of general public utility, even where they are engaged in the activity of trade, commerce or business or rendering any service for a cess or fee, provided the aggregate value of receipts from such activities does not exceed Rs.10 lakh in the year under consideration. Therefore, in effect, "advancement of any other object of general public utility" would continue to be a "charitable purpose", if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business does not exceed Rs.10 lakh in the previous year. The said limit of Rs.10 lakhs was increased to Rs.25 lakhs by the Finance Act, 2011 with effect from A.Y. 2012-13. Accordingly, if the receipts from such activities are Rs.25</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>lakhs or less, it would continue to be a charitable purpose.</p> <p>However, if the receipts from such activities are Rs.25 lakhs or more, the trust would lose its "Charitable" status. Also, the "charitable" status of the trust or institution is likely to change every year depending on whether or not its receipts exceed Rs.25 lakhs in that year.</p> <p>In order to overcome this difficulty, instead of denying exemption in cases where the receipts exceed the specified limit, the exemption limit may be fixed at Rs.25 lakhs and receipts over this limit may be subject to the maximum marginal rate after deducting the related expenditure i.e., the net receipts over and above Rs.25 lakhs may be subject to maximum marginal rate.</p>	
	<p>b) Activities of Governmental authorities be treated as activities for charitable purpose</p>	<p>b) Proviso to section 2(15) of the Income-tax Act provides that in case the receipt from any trade, commerce, business or services related thereto exceeds to Rs 25 Lacs, it would not be treated as charitable purpose under the head "advancement of general public utility". As a consequence the provisions of section 11 and 12 of the income tax act will not apply. It may be noted that the Development authorities or urban improvement trust are carrying the activities of the municipalities as provided in the Article 243W in Schedule XII of the Constitution of India. They are termed as Governmental authority as per</p>	<p><i>It is suggested that section 2(15) be amended to provide a third proviso to the effect that the first proviso shall not apply to a governmental authority carrying any function entrusted to a municipality under article 243W of the Constitution. In effect, for such government authorities, even if the activities incidental thereto result in receipts of an amount exceeding Rs 25 lacs it should be considered as incurred for advancement of general public utility.</i></p> <p><i>Also, as in case of service tax Notification 25/2012 dated 20th</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>Notification 25/2012-Service tax dated 20th June 2012.</p> <p>The aforesaid notification provides a negative list of services i.e. services which are exempt from the applicability of the service tax. Para 39 of the said circular exempts services of a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution from applicability of service tax.</p> <p>Since governmental authorities are carrying on activities in relation to any function entrusted to a municipality under article 243W of the Constitution, in line with the provisions of service tax, their activities should atleast be considered as being carried for "charitable purpose" under the provisions of the Income-tax Act, 1961. This may done by amending the definition of "charitable purpose" through insertion of third proviso to the effect that the first proviso shall not apply to the activities of a governmental authority carrying any function entrusted to a municipality under article 243W of the Constitution.</p> <p>Also, as in case of service tax, the term governmental authority should be defined in the Income tax Act, 1961.</p> <p>Such clarity in law would reduce avoidable litigations in this regard.</p>	<p><i>June 2012, the term "governmental authority" may be defined in the Income-tax Act, 1961 as under:</i></p> <p><i>" 'Governmental Authority' means a board, or an authority or any other body established with 90% or more participation by way of equity or control by government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution."</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
	c) Mandatory application of	a) The amendment by the Finance Act, 2002 requires	<i>Section 10(23C) should be amended to specifically</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	income by charitable trusts/institutions under section 10(23C)	mandatory application of income by charitable trusts/institutions including those enjoying benefits under section 10(23C) to its objects, subject to accumulation of not more than 15% of its income including income from voluntary contributions. Similar provisions under section 11(1) read with section 12(1) exclude 'corpus donations' (voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution) from the mandatory requirement of application of the income. No such provision has been made in section 10(23C). This will compel the Institutions coming within the scope of section 10(23C) to apply even their corpus donations to the day to-day activities for getting the exemption. This will be prejudicial to them because they cannot build up the corpus fund.	<i>exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/institutions.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
		b) Provisions under section 11(1) read with section 12(1) exclude 'corpus donations' (voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution) from the mandatory requirement of application of the income. On the same lines, depreciation on assets acquired out of such corpus funds should be treated as application of income.	<i>Depreciation on assets acquired out of corpus donations (voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution) should be treated as application of income.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
		c) Section 11(1) and section 10(23C) require mandatory application of income by charitable	<i>Since section 10 provides for incomes which do not form part of total income, like dividend from</i>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p>trusts/institutions to its objects, subject to accumulation of not more than 15% of its income. The income to be applied includes income which is otherwise exempt under section 10 of the Income tax Act, 1961 like dividend income, dividend from mutual funds.</p> <p>Since section 10 provides for incomes which do not form part of total income, such incomes should be exempted from the provisions of application under section 10(23C) and 11(1).</p>	<p><i>mutual funds etc such incomes should be exempted from the mandatory provisions of application under section 10(23C) and 11(1).</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
34.	Deemed Dividend-section 2(22)(e):	<p>According to section 2(22)(e), any payment by a company, not being a company in which public are substantially interested, of any sum, by way of advance or loan to a shareholder (holding not less than 10% of voting power) or to a concern in which such shareholder is a member or partner having substantial interest shall be treated as deemed dividend to the extent company possesses accumulated profits & shall be taxable in the hands of shareholder or concern, as the case may be.</p> <p>The logic behind insertion of this provision is to tax transactions coloured as loans or advances in an attempt to avoid dividend distribution tax by the payer & also avoiding tax in the hands of the recipient. But the same is causing difficulty in genuine and bonafide cases. For example, for the purpose of diversifying into new business activities by a group, a new entity is often formed &</p>	<p><i>a) Firstly, it would be in the interest of justice that genuine & bonafide transactions of loan or advance should not be treated as deemed dividend. To effectuate this, a provision should be introduced that if the loan or advance is not repaid within a certain period, it should be taxed as deemed dividend in the year in which such certain period expires. In this way, bonafide assessee with an intention to repay loan would get excluded & those with an intention of never repaying will get taxed.</i></p> <p><i>b) Secondly, whenever the loan or advance is to be taxed as a deemed dividend in the hands of recipient, tax should not be levied on the entire amount of loan or advance (provided there are sufficient accumulated profits). Tax should be levied only on that proportion of the loan or advance/ accumulated profits</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>therefore, management is common. So the conditions of section 2(22) (e) are satisfied. It's natural that the new entity will borrow funds from existing entity to meet its funding requirements & will repay when it becomes self sufficient.</p> <p>The provision u/s 2(22) (e) is based on the blanket assumption that there is an attempt to avoid tax & the bona fide assessee will also get crushed under this. Therefore, there is a strong need to amend the provisions of this section so that the genuine assessee shall be relieved.</p>	<p><i>having regard to the shareholding percentage of the concerned shareholder. This is for the very simple reason that a particular shareholder does not have a right on the entire accumulated profits of the company & his right is restricted to his shareholding only.</i></p>
35.	Section 3- Definition of Previous year	<p>In Income-tax Act, 1961 "Assessment Year" defined in Section 2(9) "Assessment Year" means the period of twelve months commencing on the 1st day of April every year.</p> <p>"Previous Year" is defined in Section 3 of the Income-tax Act, 1961 to mean "for the purpose of this Act, "previous year" means the financial year immediately preceding the assessment year.</p> <p>There is no difference in the period of Assessment Year & Previous Year since both are financial year/Income Year for accounting purpose.</p> <p>A normal income tax assessee does not understand the difference of wording of Assessment Year (AY) & Previous Year/ Accounting Year (AY) and gets confused in presenting his details, while paying Advance</p>	<p><i>In line with the provision of section 320(92) read with section 2 of the Direct Taxes Code, 2013 the concept of "previous year" and "assessment year" may be replaced with the "financial year" to mean as below:</i></p> <p><i>"financial year" as per Direct Taxes Code, 2013 means—</i></p> <p><i>(a) the period beginning with the date of setting up of a business and ending with the closure of the business or the 31st day of March following the date of setting up of such business, whichever is earlier;</i></p> <p><i>(b) the period beginning with the date on which a source of income newly comes into existence and ending with the closure of the business or the 31st day of March following the date on which such new source</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>Income tax, TDS or filing the return of income Tax. Everybody considers Assessment Year (AY), previous year (PY) and Accounting Year (A Y) as same.</p> <p>To avoid misunderstanding or confusion among Income Tax payers (Assesses) and for keeping the records, the concept of "previous year" and "assessment year" may be replaced with the "financial year" of "previous year". Even though, the said suggestion has been considered while framing the Direct Taxes Code, to simplify the law, it would be appropriate to bring the change in the Income-tax Act itself.</p>	<p><i>comes into existence, whichever is earlier;</i></p> <p><i>(c) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be; or</i></p> <p><i>(d) the period of twelve months commencing from the 1st day of April of the relevant year in any other case;</i></p>



CHAPTER II
BASIS OF CHARGE





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
36.	<i>Scope of Royalty Income Section 9(1)(vi) of Income-tax Act, 1961</i>	<p>a) Various retrospective amendments with effect from 1st June, 1976 were made to section 9(1)(vi) dealing with royalty income. Internationally, as evidenced by OECD Commentary as also books of eminent experts, the following two basic principles with regard to software payment are recognized and well settled:</p> <p>i) The proposition that "right to use a copyright" is different from "right to use a copyrighted article" is recognized and it is only the 'right to use a copyright' which is covered within the definition of royalty.</p> <p>ii) The distributor of computer software does not pay to exploit any rights in the software but only for acquisition of the software for further circulation. In view of these, payments made by a distributor to the copyright holder are in the nature of business income and not royalty income.</p> <p>Also, 'Packaged /Canned Software' means ready-made software that could be sold off the shelf. Sale of such software products represent sale of copyrighted articles as against a copyright i.e. such transactions represent sale of goods. Packaged software has been held to be 'Goods' even by the Supreme Court in case of <i>TCS vs. State of AP (271 ITR 401)</i>.</p>	<p><i>It is suggested that</i></p> <p>1) <i>Payments for copyrighted article like shrink-wrapped software as also payments made by distributors of software be specifically excluded from the definition of "royalty".</i></p> <p>2) <i>Infact 'Explanation 4' inserted by the Finance Act, 2012 should be deleted from Section 9(1)(vi):</i></p> <p><i>Such an amendment to remove the clarificatory retrospective amendment made by Finance Act, 2012 would positively impact the sentiment of the software industry and also uphold the constitutional validity.</i></p>



	<p>The Central Board of Excise and Customs ("CBEC") has recognized 'Information Technology Software' as 'Goods' and classified the same as Central Excise Tariff Item 8523 80 20 in Schedule I to the Central Excise Tariff Act, 1985. Further, 'Packaged Software/Canned Software' is recognized as 'Goods' for the purposes of Central Excise Law by the CBEC, which is another wing of the Ministry of Finance. These facts lead to the conclusion that 'Packaged Software/Canned Software' are in the nature of 'Goods' and the legislation also recognizes the same.</p> <p>Given the above, it is recommended that a specific amendment be made to the Income tax Act to exclude 'Packaged/ Canned Software' from the purview of 'royalty' defined under Section 9(1)(vi). Further, in certain cases, these software products are downloadable from the internet and not necessarily delivered in tangible media such as a CD or a DVD. However, irrespective of the mode of delivery, the fact remains that what is sold is a 'copyrighted article' and not a 'copyright'.</p>	
	<p>b) Exclusion of packaged software from applicability of TDS under Section 194J of the IT Act:</p> <p>Circular 13/2006 dated 13.12.2006 issued by the CBDT states that TDS shall be applicable only when there is a 'contract for work' and not where there is a 'contract</p>	<p><i>To bring utmost clarity, it is also suggested that a specific amendment be made to Section 194J of the IT Act to exclude sale of software products from the ambit of tax withholding. In this regard, it is suggested that the following provision</i></p>



		<p>for sale'. This proposition has also been upheld in various judicial precedents like <i>BDA Limited vs. ITO (TDS) 281 ITR 99 (HC Bom)</i>, <i>CIT vs. Dabur India Limited (283 ITR 197) (HC Del)</i>.</p> <p>Considering the facts and arguments above, it is clear that transaction of sale of 'Packaged/Canned Software' is a 'contract for sale' as against a "contract for work" and consequently, should not attract TDS provisions. It is relevant to note that 'Packaged/Canned Software' is also subject to excise duty. There are no other goods in India which are subject to both excise duty and TDS.</p> <p>An amendment to the Income tax Act to exclude 'Packaged/Canned Software' from the purview of 'royalty' would automatically exclude the transactions from the purview of Section 194J of the IT Act and would help resolve the withholding tax issue faced by traders of hardware with embossed software. The distribution network and channel partners for off the shelf packaged software also deal with hardware like computers, desktop etc. The packaged software is mostly sold along with the hardware, on the same invoice. There is no obligation of TDS on any hardware items, and the traders are finding it confusing and difficult to discharge the TDS obligation arising out of the sale of the 'Packaged Software/Canned Software'. Resolution of the definition of royalty to exclude 'Packaged</p>	<p><i>be included in Section 194J of the Act:</i></p> <p><u>Amendment required</u></p> <p><i>"194J. (1) Any person, ...</i></p> <p><i>Provided that no deduction shall be made under this section—</i></p> <p><i>(A) ...</i></p> <p><i>(B) ...</i></p> <p><i>(C) from any sums, if credited or paid for the transfer of a computer software (including the granting of a licence), along with or without a computer or computer-based equipment or for ancillary services such as up gradation or subscriptions, which does not involve transfer of all or any rights in respect of any copyright."</i></p>
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The Institute of Chartered Accountants of India

		<p>Software/Canned Software' would also help traders and boost ease of business.</p> <p>Separately, Software Ancillary Services such as Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license but involve only payments of consideration for services is not 'Royalty' for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the IT Act. Clarification may be issued that AMC's, Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license, but involve only payments of consideration for services is not "Royalty" for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the IT Act and that such transaction are not liable for TDS under Section 194J of the IT Act.</p>	
37.	Carry forward of excess foreign tax credit	<p><i>The Income-tax Act, 1961 allows for set off in respect of foreign taxes paid on overseas income. However, in case of loss/inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.</i></p>	<p><i>It is suggested that assesseees be permitted to carry forward (say for five years) such unutilized credit (in USA such relief is granted vide section 904(c) of Federal Tax Act) for adjustment in future years.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



Chapter III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
38.	Leave Travel Concession/ Assistance - Replacement of "Calendar year" by "Financial year":	<p>As per the provisions of section 10(5) of the Income-tax Act, 1961, an exemption of the value of leave Travel Concession/Assistance received by the employee from his employer is provided subject to fulfillment of prescribed conditions. Rule 2B provides for the specified conditions to be fulfilled. One of the conditions is that the exemption can be availed only in respect of two journeys performed in a block of four CALENDER YEARS.</p> <p>The concept of "Calendar year" was introduced in the year prior to 1989 when there was no uniform Previous Year. Since 1989 uniform Previous Year has been introduced i.e. April – March. To be in line with the concept of "financial year" adopted by other provisions of the Income tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March) i.e. the calculation of block period shall be shifted from Calendar year to Financial Year.</p>	<p><i>To be in line with the concept of "financial year" adopted by other provisions of the Income tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March)</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>
39.	CER Sale to be treated as Capital Receipt	<p>Carbon credit is an incentive available to the Industries reducing CO2 emission by investing in energy efficient technologies. In the present day scenario, the cost of putting additional technology for clean development mechanism is</p>	<p><i>This credit should be treated as capital receipt free from any taxes. Alternatively, the amount spent should be eligible for deduction under section 10AA, 80IA, 80IB, 80IC etc.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		relatively high. The incentive is given to relatively offset the additional cost of Investments in such Capex. Further, this credit can be viewed as an incentive, which augments country's foreign exchange earnings.	<i>PROVISIONS OF DIRECT TAX LAWS)</i>
40.	Section 10(10D) TDS in respect of maturity of insurance policies which are taxable under section 10(10D)	<p>Section 10(10D) provides for non-taxability of sum received from maturity of insurance policies. However, following are some exceptions to this:</p> <p>(a) any sum received under section 80DD(3) or 80DDA(3)(Substituted by section 80DD by Finance Act, 2003) or</p> <p>(b) any sum received under Keyman Insurance Policy.</p> <p>(c) any sum received under an insurance policy issued after 01.04.2003, but on or before 31.03.2012 in respect of which premium payable for any of the years during the term of policy exceed 20% of actual capital sum assured.</p> <p>(d) any sum received under an insurance policy issued on or after 01.04.2012 in respect of which premium payable for any of the years during the term of the policy exceeds 10% of the actual sum assured.</p> <p>(e) any sum received under an insurance policy issued on or after 01.04.2012 in respect of which premium payable for any of the years during the term of the policy exceeds 15% of the actual sum assured, in case the policy is issued on or after</p>	<p><i>It is suggested:</i></p> <p>(a) <i>that a provision relating to TDS should be inserted in Chapter XVIIIB to cover such payments where the exemption under section 10(10D) is denied to the recipient of income from insurance companies.</i></p> <p>(b) <i>that where the premium paid is above 10% or 20%, as the case may be, of capital sum assured, the premium paid certificate (receipt) issued by insurance companies for the purpose of 80C should clearly mention that the qualifying amount for 80C deduction in respect of such premium paid is only up to 10%/20% as the case may be, of capital sum assured.</i></p> <p>(c) <i>Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications may be made accordingly.</i></p> <p><i>(SUGGESTION TO IMPROVE TAX COLLECTION)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>1.4.2013 for insurance of life of the person referred to in section 80U and section 80DDB.</p> <p>Any sum received by the beneficiary on maturity of insurance policies in above-mentioned cases is taxable. However, there are no provisions under chapter XVIIIB to deduct tax at source from the sum being paid to the beneficiaries in such cases due to which many policy holders getting maturity from insurance companies without payment of taxes.</p>	
41.	Definition of "Keyman Insurance Policy" - Section 10(10D)	<p>Any sum received under a Keyman insurance policy is not exempt under section 10(10D). The meaning of "Keyman Insurance Policy" given in Explanation 1 to section 10(10D) was amended by Finance Act, 2013 to include such policy which has been assigned to a person at any time during the term of the policy, with or without consideration". This amendment is effective w.e.f. 1.4.2014 (i.e. A.Y.2014-15).</p> <p>The effect of this amendment is to deny the benefit of exemption in respect of maturity proceeds of keyman insurance policy which has been assigned to a person during the term of the policy, whether with or without consideration, by including the assigned policy within the definition of "Keyman insurance policy".</p> <p>The issues under consideration</p>	<p><i>It is, therefore, suggested that in cases where keyman insurance policy is assigned to the employee, the employer should not be made liable to deduct tax at source. The insurance company may be vested with the obligation to deduct tax at source in respect of such payments.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>and suggestions thereof in this regard are as follows –</p> <p>a) Consequent to the amendment in the definition of “Keyman insurance policy”, the maturity proceeds received by the person to whom the policy is assigned, becomes taxable as “Profits in lieu of salary” under section 17(3)(ii). Since any salary due from an employer or a former employer to an assessee in the previous year, is chargeable under section 15 and the definition of salary under section 17(1) includes “profits in lieu of salary”, it appears that the employer or the former employer, as the case may be, would be required to deduct to tax at source under section 192 at the time of payment. It is practically difficult for the employer or former employer to deduct tax at source on payment received by the employee directly from the insurance company.</p>	
		<p>b) Further, the entire proceeds would be subject to tax under section 17(3)(ii) in the hands of the person to whom the policy is assigned, whereas only the premium paid by the employer on which deduction has been claimed less the surrender value paid by the employee to the employer at the time of assignment should be subject to tax, since the same represents the actual benefit availed by the assignee.</p>	<p><i>b) It is suggested that section 17(3)(ii) may be appropriately amended to provide that tax would be levied only to the extent of such difference, or in the alternative, deduction for surrender value may be provided for under section 16. In such a case, the employer can deduct tax at source on the differential amount treated as “profit in lieu of salary” at the time of assignment.</i></p> <p><i>Further, in any case, the</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
			<i>maturity proceeds received on death of the assignee should be kept out of the tax net. This benefit is similar to the exemption given in respect of life insurance policies, where the annual premium paid exceeds 10% of minimum sum assured.</i>
42.	Section 10(13)- Payment from approved superannuation fund	<p>Section 10(10AA) provides for exemption for payment received as cash equivalent of leave salary in respect of earned leave period at the time of retirement whether superannuation <i>or otherwise</i>.</p> <p>Section 10(13) provides for exemption with regard to payment from an approved superannuation fund. Section 10(13)(ii) of the Act provides for exemption in the hands of the employee in respect of the amount received on commutation of the annuity in case of retirement at or after a specified age or becoming incapacitated prior to such retirement. This provision however does not cover commutation of an annuity paid on voluntary retirement of the employee.</p> <p>Section 10(10AA) as mentioned above has taken care of such case by using the terminology "or otherwise". Since the intention of the law makers is clear by the wordings of section 10(10AA), section 10(13)(ii) may be appropriately amended to include the words "or otherwise". This will provide relief to genuine taxpayers who are taking voluntary retirement.</p>	<p><i>Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of voluntary retirement, by including the words "or otherwise" in line with section 10(10AA) of the Income tax Act, 1961.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
43.	Annual receipts" under section 10(23C)	<p>"Under section 10(23C)(iiiad) and (iiiiae) of Income-tax Act, it is provided that the income of University/Educational institutions/hospitals/ other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Though annual receipts have been prescribed as Rs.1 crore vide Rule 2BC of Income-tax Rules, the word "annual receipts" have not been defined in the Income-tax Act.</p> <p>It is not clear as to whether:</p> <p>(a) for computing "annual receipts" only the receipts of such institutions from educational/hospital activities alone are to be considered each year;</p> <p>(b) Certain receipts of such institutions that are not received on annual basis e.g. receipts from sale of property, equity shares and other proceeds on divestment are to be excluded from the computation of "annual receipts";</p> <p>(c) In certain cases where such charitable institutions receive donations in kind in the form of land, movable assets etc. whether "annual receipts" would exclude such</p>	<p><i>It is suggested that "Annual Receipts" be clearly defined as income of the hospitals/ educational institutions arising regularly/every year but excluding value of donation received in kind by way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.</i></p> <p><i>Further, it may be specifically provided that donations received towards corpus by way of land, movable assets are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		receipts since they are not received annually.	
44.	Tax policy for MGNREGA, SSA, NRHM	<p>The National Rural Health Mission (NRHM) of the Ministry of Health & Family Welfare was launched on 12th April, 2005 by the Government of India to improve medical facilities in rural areas in the country. The NRHM seeks to provide accessible, affordable and quality health care to the rural population, particularly vulnerable sections. NRHM aims to reduce the Maternal Mortality Ratio (MMR), Infant Mortality Rate (IMR) and the Total Fertility Rate (TFR). It also envisages increasing public spending on health from 0.9% to 2-3% of the GDP with improved arrangements for community financing and risk pooling. The NRHM has provided an umbrella under which the existing Reproductive and Child Health Programme (RCH) and various National Disease Control Programmes (NDCPs) have been incorporated.</p> <p>The Ministry of Health & Family Welfare is implementing National Rural Health Mission as a Centrally Sponsored Scheme (CSS). As against a Central Sector Scheme, a CSS is funded by the Govt. of India and implemented by and in the States. For the Scheme's implementation, the funds are routed as Grants-in-Aid from the Govt. of India to the State Health Societies and District Health Societies/ Sub district</p>	<p><i>The provisions of Section 10(23C) (iii) of the Income-tax Act, 1961 may be applicable to such societies for getting exemption from levy of Income Tax which are reproduced below:</i></p> <p><i>“Any hospital or other institution for the reception and treatment of persons, suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes not for profit and which is wholly or substantially financed by the Government”</i></p> <p><i>As per the above provisions a notification may be issued granting exemption to all the Societies registered at State & District level being funded by Govt. (Central/ State) otherwise a specific exemption should be provided to such societies w.e.f. the date of the formation of such societies/ launching of the programme. This may not be applicable not only for societies formed for implementation of Health Programme but also for other programmes such as Education & National Aids Control Programmes, where also the funds are routed through societies.</i></p> <p><i>As per the existing provisions of Section 12A of the Income Tax</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>formations.</p> <p>As per the existing provisions of the Income-tax Act, 1961, all the States and District Health Societies are required to get themselves registered under 'Section 12AA' and required to file the return of income. Further, as per the provisions of the Income-tax Act, 1961 each such society should spend 85% of the grant received during the year within the same year and if the unspent balance is more than 15% of the grant received the same becomes taxable. Under the NRHM, States/ Districts when unable to utilise the entire Grant within the year of receipt have to carry forward the same for the ensuing financial year(s). The NRHM programme is an ongoing programme and funds unspent are being utilised in subsequent years, as absorptive capacity increases.</p> <p>Taxing the unspent balances therefore in effect reduces funds available for implementation of the Mission and is a retrograde measure adversely impacting the programme and expenditure in such a critical social sector as health.</p> <p>Several representations have been from State of Tamil Nadu, Karnataka & Himachal Pradesh requesting to get exemption to the State & District Health Societies from the levy of Income-tax, as either they are not getting registration u/s 12AA of Income-tax Act, 1961 or if got registered being tax imposed on</p>	<p><i>Act, 1961 each State and District Health Societies are eligible to get tax exemption if they comply the conditions and procedure as laid down under Section 12A & 12AA of Act which provides of getting Registration of the Society and filling a regular Income Tax Return as per the provisions of the Income Tax Act.</i></p> <p><i>Recently introduced section empowers the Central Government to notify for 100% exemption u/s 10(46) if covered under the provisions of this section and the SHS and DHS falls under such category, it is therefore suggested that exemption be granted to all SHS and DHS so that the same is made available to all at least from the current financial year so that from the Assessment Year 2012-12 these societies are exempted from filling the Income Tax Return or even if they are required to file the return they can do so as per the directions to be given in the Notification.</i></p> <p>(SUGGESTION FOR REDUCE/ MINIMIZE LITIGATIONS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		the unspent balances.	
45.	Income-tax exemption for securitization trusts, levy of distribution tax on income distributed by such trusts under section 10(23DA)	<p>The securitization trust has so far been treated as a pass through vehicle for tax purposes i.e. all the income of the securitization trust has been offered to tax by its investors (unless the investor is tax exempt viz., a mutual fund). This is consistent with the tax rules that apply to trusts under the tax law which prescribes a single level tax on a trust's income (i.e. tax is levied either on the trustee or on the beneficiaries). The interest income arising to such trusts from securitized debts is taxed directly in the hands of the contributories.</p> <p>The tax implications may be summarized as follows:-</p> <ul style="list-style-type: none">➤ If contributory is a Mutual Fund, it will be entitled to exemption under section 10(23D).➤ Any other contributory can claim deduction for corresponding expenses against such income (eg. interest and overheads)➤ Contributories can claim credit of TDS, if any, made by the borrower <p>However, due to disputes regarding the person on whom tax incidence lies, tax demands were raised on the securitization trusts rather than the investors, by treating such trusts as AOPs. In order to set at rest such controversies, the Finance Act</p>	<p><i>Instead of distribution tax model, a complete pass through model identical to existing regime be made applicable to Venture Capital Funds/Venture Capital Companies under section 10(23FB) read with section 115U, since the participation in PTCs is largely restricted to well regulated financial institutions.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>2013 :</p> <ul style="list-style-type: none">➤ Exempted the securitization trust from tax on income earned.➤ Imposed a distribution tax on income distributions by the securitization trust @ 25% in case of distributions to individuals and HUFs and @ 30% in other cases.➤ Distribution tax will not be payable on income distributed by the securitization trust to a person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act (viz. mutual funds).➤ Exempted the investors in the securitization trust from taxation on income distributions received. <p>The above mentioned provisions have, however, created certain problems or securitized structures in vogue on account of the following reasons:</p> <p>(a) The exemption to the investors in the securitization trust means that investors (other than exempt investors such as mutual funds) in pass through certificates (PTCs) will now earn exempt income instead of taxable income as was the case hitherto. This implies that the investors would not be able to set-off expenditure/</p>	



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion												
		<p>losses against income earned from PTCs in view of provisions of section 14A which prohibits deduction of any expenditure incurred in relation to exempt income. This may result in the entire transaction becoming unviable for investors, which is illustrated below.</p> <p>If the investor is a bank investing Rs.100 crores in a Securitized debt yielding interest @ 10% p.a. Assuming, that the bank's own cost of borrowing is say 8% p.a., its tax liability on interest income from securitized debt pre and post amendment and profit after tax will be as follows :-</p> <table border="1" data-bbox="576 1031 954 1860"> <thead> <tr> <th data-bbox="576 1031 704 1192">Particulars</th> <th data-bbox="704 1031 760 1192"></th> <th data-bbox="760 1031 857 1192">Pre amendment</th> <th data-bbox="857 1031 954 1192">Post amendment</th> </tr> </thead> <tbody> <tr> <td data-bbox="576 1192 704 1570">Interest income @ 10% on Rs. 100 Cr distributed by Securitised Trust</td> <td data-bbox="704 1192 760 1570">(A)</td> <td data-bbox="760 1192 857 1570">10.00 Cr</td> <td data-bbox="857 1192 954 1570">10.00 Cr</td> </tr> <tr> <td data-bbox="576 1570 704 1860">Less: Distribution tax paid by the trust@30% on gross</td> <td data-bbox="704 1570 760 1860"></td> <td data-bbox="760 1570 857 1860">N.A.</td> <td data-bbox="857 1570 954 1860">3.00 cr</td> </tr> </tbody> </table>	Particulars		Pre amendment	Post amendment	Interest income @ 10% on Rs. 100 Cr distributed by Securitised Trust	(A)	10.00 Cr	10.00 Cr	Less: Distribution tax paid by the trust@30% on gross		N.A.	3.00 cr	
Particulars		Pre amendment	Post amendment												
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Less: Distribution tax paid by the trust@30% on gross		N.A.	3.00 cr												



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification				Suggestion
		income				
		Net income distributed		10.00 Cr	7.00 Cr	
		Less :- Interest expenditure @ 8% on Rs. 100 Cr	(B)	8.00 Cr	8.00 Cr	
		Net income	C= (A-B)	2.00 Cr	(1.00) Cr	
		<u>Tax payable</u>				
		By Investor @ 30% ¹ on net income	(D)	0.60 Cr ²	-	
		Profit/(Loss) after tax	(C-D)	1.40 Cr	(1.00) Cr	<i>Not allowed to be set-off on account of section 14A.</i>
		The above illustration highlights				

¹ Surcharge and cess ignored for the sake of simplicity

² 30% of Rs. 2.00 Cr



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>that a structure which was commercially viable prior to amendment made by Finance Act, 2013 may have the effect of becoming unviable solely due to change in the basis of incidence of taxation.</p> <p>It may be noted that the financial sector works on spread between yield from investments and own cost of borrowing. Tax on gross income at a rate ordinarily applicable to net income may severely impact the spread and make securitization structures commercially unviable defeating the object of SEBI and RBI guidelines for orderly development of securitization market.</p> <p>(a) The trading of PTCs (most PTCs are tradable instruments) also creates dual points of taxation (i.e. at the time of distribution of income by the securitization trusts and at the time of realization of gain when the PTC itself is sold for a profit) which seems to be unintended.</p> <p>(b) Ambiguity also arises for the borrower while evaluating withholding obligation at the time of payment of interest. Since the securitization trust is assessable as a separate tax entity and not a mutual fund or bank exempt from withholding, the borrower will be required to withhold tax unless the trust provides</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>NIL withholding certificates. The securitization trust will be required to file return to claim refund of such TDS. The securitization trust is able to set off TDS credit against distribution tax payable by it.</p> <p>(c) There is no grandfathering provided for existing securitized trusts. Hence, any income distributed by existing securitized trusts on or after 1 June 2013 will also be subject to the new tax regime.</p>	
46.	Section 10(23FB) Tax exemption for Alternative Investment Funds – Venture Capital Funds	<p>a) The Finance Act, 2012 provided an exemption to venture capital funds (VCFs) with a corresponding direct tax charge on the investors on the income earned by the fund from its investments. The VCF Regulations were repealed on 21 May, 2012 with the simultaneous introduction of the SEBI (Alternative Investment Funds) Regulations 2012 (AIF Regulations). Funds raised under the VCF Regulations were resultantly grandfathered.</p> <p>AIF Regulations now regulate all privately pooled investment vehicles which collect funds from investors for investments in accordance with a predefined investment policy for the benefit of its investors. AIF Regulations cover a much broader ambit of funds and categorize them into broadly three categories:</p>	<p>(a) <i>The pass-through status may be extended atleast, to cover all sub-categories of Category I AIFs (i.e. not only to venture capital funds but also to SME Funds, social venture funds, infrastructure funds), in line with the assurance held out explicitly by AIF Regulations.</i></p> <p>(b) <i>From a long-term perspective, it is best to maintain an alignment of the tax laws and the AIF Regulations to mitigate the need to constantly update the tax law for changes in Regulations so as to not artificially stifle the AIFs.</i></p> <p><i>In fact, the Finance Act, 2012 had removed the sectoral restrictions imposed on VCUs by the Income-tax Act, 1961 on the ground that since SEBI regulates the working of VCF,</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p>Category I AIF – these are funds which invest in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable.</p> <p>Category I AIF presently has 4 sub-categories, namely, venture capital funds, SME Funds, social venture funds and infrastructure funds. Investment norms have been prescribed for each of the sub-categories to ensure that the fund allocates substantial majority of its capital to the target focus. The stated intent of Category I AIF is to cover AIFs that are generally perceived to have positive spillover effects on economy and for which the SEBI/ Government/ other regulators might consider providing incentives or concessions. The Explanation to Regulation 3(4)(a) of AIF Regulations which clarified this aspect also clarified that such funds which are formed as trusts or companies shall be construed as VCF/VCC as specified under section 10(23FB) of the Act. The said Explanation is reproduced below:</p> <p><i>“Explanation.— For the purpose of this clause, Alternative Investment Funds which are generally perceived to have positive spillover effects on economy and for which the Board or Government of India or other regulators in India might</i></p>	<p><i>VCC & VCU, there is no necessity of having separate conditions under the Income-tax Act, 1961 imposing sectoral restrictions on the VCUs.</i></p> <p><i>Therefore, multiplicity of conditions in different regulations in respect of the same entities should be avoided. Hence, additional conditions should not be imposed under the Income-tax Act, 1961 to qualify for tax benefit.</i></p> <p><i>(c) As regards condition of disqualification on account of investment in associate VCU, it is suggested that disqualification from pass through status may be restricted to income arising from associate VCU only. Further, to remove any ambiguity, it may also be clarified that if breach of any condition is subsequently rectified, the pass through status may be restored.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p><i>consider providing incentives or concessions shall be included and <u>such funds which are formed as trusts or companies shall be construed as venture capital company or venture capital fund as specified under sub-section (23FB) of Section 10 of the Income-tax Act, 1961</u></i></p> <p>Category II AIF is a residual category and covers AIFs for which no specific incentives or concessions are given by the Government/ other regulators. Category II AIF will cover classic private equity funds and debt funds.</p> <p>Category III AIFs are AIFs which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. Category III AIF will cover hedge funds or funds which trade with a view to make short term returns. Similar to Category II AIF, no specific incentives or concessions are given by the Government/ other regulators.</p> <p>The AIF Regulations provide that Category I AIF which are formed as trust/ company shall be construed as venture capital company/ venture capital fund under s. 10(23FB) of the Act (and will hence be eligible for the basis of taxation described above ie direct tax charge on the investors).</p> <p>The Finance Act, 2013 had granted tax exemption and</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>corresponding direct tax charge on the investors to only the Venture Capital Fund sub-category of Category I AIFs. Further, three conditions have been imposed on AIFs in order to be covered within the ambit of section 10(23FB), namely:</p> <ul style="list-style-type: none">(i) The units/shares of the AIF should not be listed on a recognised stock exchange.(ii) The AIF should not have invested in associated companies as defined.(iii) The AIF should have invested not less than 2/3rd of its investible funds in unlisted equity shares/equity linked instruments of domestic unlisted companies. <p>The first two of the above conditions are imposed only in the tax law (listing of AIFs is permitted under the AIF Regulations after the final close of the fund subject to conditions and investment in associated companies is permitted subject to obtaining a majority investor consent).</p> <p>The tax implications on account of this amendment is as follows –</p> <ul style="list-style-type: none">(a) VCCs/VCFs registered prior to 21st May 2012 under VCF regulations is impacted by the proposed amendment. They continue to be eligible for pass through taxation	



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion									
		<p>under section 115U.</p> <p>(b) The impact on AIFs registered on or after 21st May 2012 under AIF Regulations is summarized as follows :-</p>										
		<table border="1"> <thead> <tr> <th data-bbox="576 569 651 940">Category</th> <th data-bbox="651 569 769 940">Sub-categories which qualify for pass through status</th> <th data-bbox="769 569 966 940">Tax status in an event AIF is registered on or after 21 May 2012</th> </tr> </thead> <tbody> <tr> <td data-bbox="576 940 651 1766">I</td> <td data-bbox="651 940 769 1766">VCF being trust or company</td> <td data-bbox="769 940 966 1766">Will qualify as VCC/VCF under s.10(23FB) but, subject to compliance of 3 additional conditions viz., VCC/VCF should remain unlisted Should invest > 2/3rd investible funds in unlisted equity shares/equity linked instruments of VCUs Should not invest in associate VCU</td> </tr> <tr> <td data-bbox="576 1766 651 1856">I</td> <td data-bbox="651 1766 769 1856">▪ SME Fund</td> <td data-bbox="769 1766 966 1856">Will not qualify as (and, will</td> </tr> </tbody> </table>	Category	Sub-categories which qualify for pass through status	Tax status in an event AIF is registered on or after 21 May 2012	I	VCF being trust or company	Will qualify as VCC/VCF under s.10(23FB) but, subject to compliance of 3 additional conditions viz., VCC/VCF should remain unlisted Should invest > 2/3rd investible funds in unlisted equity shares/equity linked instruments of VCUs Should not invest in associate VCU	I	▪ SME Fund	Will not qualify as (and, will	
Category	Sub-categories which qualify for pass through status	Tax status in an event AIF is registered on or after 21 May 2012										
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I	▪ SME Fund	Will not qualify as (and, will										



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>					
		<ul style="list-style-type: none"><li data-bbox="651 342 959 447">▪ Social Venture Fund<li data-bbox="651 447 959 1350">▪ Infrastructure Fund <p data-bbox="769 342 959 1350">cease to be) VCC/VCF under s.10(23FB) and consequently will not be eligible for pass through taxation despite being identified as socially desirable having positive spillover effects on the economy and eligible for other concessions from Government/SEBI</p> <p data-bbox="769 1098 959 1350">Will be governed by normal rules of taxation as applicable to relevant nature of entity</p> <table border="1" data-bbox="578 1360 959 1749"><tr><td data-bbox="578 1360 646 1581">II</td><td data-bbox="646 1360 769 1581">Generally includes Private equity and debt funds</td><td data-bbox="769 1360 959 1581" rowspan="2">Will not qualify as VCC/VCF under s.10(23FB)</td></tr><tr><td data-bbox="578 1581 646 1749">III</td><td data-bbox="646 1581 769 1749">Generally includes hedge funds</td></tr></table> <p data-bbox="578 1759 959 1864">(c) Even for new VCCs/VCFs which are registered under AIF Regulations,</p>	II	Generally includes Private equity and debt funds	Will not qualify as VCC/VCF under s.10(23FB)	III	Generally includes hedge funds	
II	Generally includes Private equity and debt funds	Will not qualify as VCC/VCF under s.10(23FB)						
III	Generally includes hedge funds							



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>compliance with three additional tax conditions referred earlier is necessary to be eligible for pass through taxation. In case of breach of any of the conditions, VCC/VCF will be governed normal rules of taxation as applicable for ordinary company or trust. A clarification is required as to whether tax status of VCC/VCF will be restored if the breach is subsequently rectified.</p> <p>(d) Another concern on account of the proposed provisions is that if a VCC/VCF makes an investment in one associate VCU, would it lose its pass-through status despite the fact that all other VCUs in which it has invested are not its associates.</p> <p>(e) When normal rules of taxation are applied as a consequence of disqualification from pass through taxation, issues such as double taxation and/or levy of DDT and/or applicability of withholding may arise due to interposition of VCC/VCF between VCU and investor.</p>	
		<p>b) Earlier under Section 10(23FB) of Income-tax Act, any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) set up to raise funds for investment was</p>	<p><i>It is suggested that section 10(23FB) be reworded as follows:</i></p> <p><i>“Any income of a venture capital company or venture</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>exempt from taxation. However, in 2007, this was amended and the scope of VCC / VCF was narrowed down to select sectors and the exemption from income tax was limited to "any income of a VC company or VC fund from investment in a venture capital undertaking".</p> <p>The sectoral restriction stands removed in Union Budget 2012 which was a welcome move. However, the tax exemption still remains limited to "any income of a VC company or VC fund from investment in a venture capital undertaking". Keeping in mind the growing importance of VC funds in infrastructure and also in other important sectors of our economy, the previous wording of "set up to raise funds for investment" needs to be restored in place of "from investment" under Section 10(23FB).</p> <p>A change in the wording from "any income of a VC company or VC fund from investment" to "any income of a VC company or VC fund set up to raise funds for investment" will enable the VCC / VCF to undertake analysis / study necessary to evaluate the project viability as well as to render other services for the projects in which investments are made. Restricting the wording to "any income of a VC company or VC fund from investment" severely restricts the tax exemption thus affecting the commercial viability of the VCC / VCF.</p>	<p><i>capital fund from investment set up to raise funds for investment in a venture capital undertaking."</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
47.	Section 10(26) – Exemption to Scheduled Tribes in specified areas –time for removal	Section 10(26) which provides exemption to the members of Scheduled Tribes residing in specified areas was introduced in the year 1974. This exemption was basically provided for the development of persons residing in backward areas and to enable them to have more disposable income in their hands. In current scenario, even these areas have been developed and people residing therein have high disposable incomes. It is thus suggested that this exemption be gradually withdrawn.	<i>Considering the development of the areas mentioned in section 10(26), it is suggested that the exemption provided be withdrawn gradually withdrawn. Section 10(26) may be amended to provide that only members having income up to, say Rs 20 lakhs, are exempt from taxation.</i>
48.	Income of minors - to increase exemption limits under section 10(32)	At present income of minors included in the hands of parents is exempt to the extent of Rs.1,500/- for each minor. The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years, limit of Rs.1,500/- fixed is woefully inadequate.	<i>It is suggested that this should be raised to at least Rs.10,000/- for each minor child.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
49.	Section 10B – Exemption to newly established 100% EOUs – should be extended to STPIs registered units	Earlier section 10B provided for special provisions in respect of newly established 100% Export Oriented Units. The exemption provided was limited to 90% of such profits and gains as is derived from export of articles or things or computer software for a period of 10 consecutive assessment years. Although exemption under this section is not available wef AY 2012-13, there is a major issue on what is 100% EOU.	<i>Explanation 2(iv) should be suitably amended to grant 100% EOU status to STPI registered unit.</i> (SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>Clause (iv) of explanation 2 which defines 100% EOU is as follows:</p> <p><i>"hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.</i></p> <p>No Board has been appointed under this section till now. Instead of Board, Ministry of Information technology and communications of Central government has appointed Software Technology Park of India to license 100% to claim deduction u/s 10B. This has created unnecessary litigation between assessee and department. A sword is hanging on all STPI registered undertakings who have claimed deduction u/s 10B. . An amendment in this regard will avoid harassment to software companies who have claimed section 10B deduction by using STPI approval.</p>	





CHAPTER IV

COMPUTATION OF TOTAL INCOME





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
50.	<i>Disallowance of expenditure incurred in relation to income not includible in total income under section 14A of the Act:</i>	<p>As per the existing provisions of section 14A of the Act, no deduction shall be allowed in respect of expenditure incurred by a taxpayer in relation to income which does not form part of the total income under the Act. Further, Section 14A of the Act states that the provisions of this section shall also apply in cases where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.</p> <p>In this regard, a method has been prescribed under rule 8D of the Income-tax Rules, to calculate the amount of disallowance for the purpose of section 14A of the Act. As per the prescribed method in rule 8D, the disallowance for the purpose of section 14A is aggregate of the following:</p> <ul style="list-style-type: none">a) Amount of expenditure directly relating to exempted income.b) Amount of interest expenses not directly attributable to any particular income- in the proportion of average value of investments (whose income is exempt) to average of total assets.c) Half percent of average value of investments (which generate exempt income) <p>Rule 8D has created genuine hardships for tax payers, as the</p>	<p><i>It is suggested that:</i></p> <ul style="list-style-type: none">a) <i>Only those expenses which are directly related to earning of exempt income shall be disallowed.</i>b) <i>Further, the overall maximum limit of expense to be disallowed should not exceed the tax payable on exempted income earned.</i>c) <i>Overall maximum limit of expense to be disallowed in case of dividend income earned from holding strategic investment in group companies shall be capped.</i> <p><i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>calculation basis under rule 8D is arbitrary. In many cases, the disallowance calculated as per rule 8D method exceeds the amount of total exempted income earned during the year.</p> <p>This is because of the following reasons:</p> <ul style="list-style-type: none">• Firstly, the interest expense, which does not form part of exempted income, is disallowed.• Secondly, while working out half percent of the average investments, all the investments in shares/mutual funds are considered.• Thirdly, this method does not demarcate between investments that have generated or not generated income during the year.• Lastly, no distinction has been made for companies earning dividend income due to holding strategic investments in group companies and very little expenditure is attributable to earn such dividend income.	



PART A-SALARIES

DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
51.	Deduction to salaried assesses- Payment for notice period	<p>As per the prevalent norm, the employees are required to serve notice within the stipulated time before leaving the organisation. The notice period, however, varies from organisation to organisation. For example, in an organisation the notice period may be 90 days or an employee has to pay 90 days salary amount to the organisation as an employee may get a better job opportunity in another organisation wherein he is required to join within 30 days. Accordingly the employee has to give 30 days notice in old organisation, and pay for short notice of 60days.</p> <p>Generally the contract of service also provides that in case the employer is not satisfied with the performance of the employee he may terminate his services by giving a notice of 30 days or 30 days salary. In case the employer suspends the employee with immediate effect he pays an amount equivalent to 30 days salary and claims deduction thereof. Such amount becomes taxable in the hands of the employee. However, in case the employee is required to pay notice period salary, no deduction of such amount paid is allowed to him. If the new employer agrees to bear the brunt of notice period</p>	<p><i>It is suggested that said anomaly may be resolved and appropriate provisions be inserted so that income from notice period pay is chargeable in the hands of ex-employer and deduction of the amount of notice period pay paid be made available to the employee as he has not effectively received that income.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		pay, say of 60 days in above example, the said amount will be included in the total income of the employee and tax will be deducted thereon even if such income belonged to the ex-employer and is taxable in his hands. Thus, in effect the assessee will be liable to pay tax on 14 months salary i.e. salary for more than 12 months without any deduction available to him.	
52.	Deduction for Employee Stock Option Cost	Grant of Employee Stock Option is one of the accepted and widely followed practices for remunerating the employees. Detailed guidelines have been prescribed by SEBI in this regard. Further, the SEBI guidelines and Accounting Standards, provides for accounting of difference between option price and market value of security of the date of grant as employee remuneration cost. Under Income-tax Act, difference between the fair market value of shares and exercise price is treated as income in the hands of the employees. Recently, Delhi Tribunal in the case of Ranbaxy (39 SOT 17) has taken a view that ESOP cost is not allowable as deduction. Thus, the situation is that for levy of tax on employee, ESOP is income but the same is not allowed as deduction in the hands of the employer company. .	<i>Necessary amendment may be made in Income-tax Act or circular should be issued by the CBDT to allow deduction for ESOP cost being employee remuneration cost.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
53.	Medical reimbursements for retired employees:	Under section 17 of the Income-tax Act, medical reimbursements to employees are exempted from tax up to Rs.15,000 per annum. Further, the expenditure incurred by the employer for the medical treatment of the employees and his family in approved hospitals is also not treated as a perquisite in the hands of the employee. However, this tax benefit is not available to retired employees.	<i>It is suggested that the provisions of section 17 be amended to include retired employees for the tax benefit on medical reimbursements / hospitalization expenditure in approved hospitals.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



PART C-INCOME FROM HOUSE PROPERTY

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
54.	Deduction u/s 24(a) of the Income-tax Act, 1961:	a) Section 25B provides that the arrears of rent received after allowing a deduction of 30% will be taxable as Income from House property. Further, section 25AA also provides for taxation of unrealised rent subsequently charged to income-tax. Even though the nature of income being charged to tax in both cases is similar, the deduction of 30% is not allowed in case of unrealised rent subsequently received. It may be noted that had the rent been realised earlier in normal course deduction of 30% would have been allowed under section 24(a). This discrimination seems to be inadvertent omission and thus needs rectification.	<i>Section 25AA be suitably amended to provide that unrealised rent subsequently realised shall after deducting a sum equal to thirty percent of such amount shall be deemed to be income chargeable under the head "Income from House property"</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
		b) Huge lease rent is generally paid if the land is taken on lease and the building is constructed by the assessee. However, section 24 of the Income-tax Act, 1961 does not provide any deduction from income from house property for an amount so paid by the assessee.	<i>Considering the cost involved in payment of lease rents, it is suggested that ground rent shall be allowed as separate deduction while computing income under the head "Income from House property".</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
55.	<i>Deduction for ground rent other than u/s 24(a)</i>	At present, there is no provision for allowing deduction towards ground rent paid in computation of income from house property & the same has been merged into	<i>It is suggested that ground rent shall be allowed as deduction in addition to section 24(a)</i> <i>(SUGGESTIONS FOR</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		24(a).Ground rent shall be allowed as deduction in addition to section 24(a) deduction since 24(a) mainly focuses on repairs & maintenance. The logic behind this suggestion is that the repairs by way of 30% standard deduction cannot accommodate a huge lease rent which may have to be paid if the land is taken on lease & building is constructed by the assessee.	<i>RATIONALIZATION OF THE PROVISIONS OF THE INCOME-TAX ACT)</i>
56.	Interest on borrowed Capital :	Keeping in mind the prices of the house properties and also the rate of interest on housing loan, it is felt that the deduction under section 24(b) in respect of Interest on borrowed capital for self-occupied property is very less.	<i>Therefore, it is suggested that the deduction in respect of interest on housing loan in case of self occupied property should be increased from Rs. 1.5 Lakhs to Rs. 3 Lakhs</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



PART D-PROFIT AND GAINS OF BUSINESS AND PROFESSION

DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
57.	a) Depreciation on books used by professionals	Books are very important tools used by professionals to carry on their profession. Though expenditure on purchase of books is no doubt capital in nature, the books purchased by professionals' have a very short shelf life of around a year or sometimes even less, due to the fast pace of developments in their respective fields, be it medicine or engineering or law or accountancy. Depreciation was always allowed on books at 100 per cent till 1st April, 2003, from which date, by the amendment to Appendix I to the Income-tax Rules, 1962, the rate of depreciation has been reduced to 60 per cent for books not being annual publications. This has created numerous difficulties and hardship for professionals who need to capitalize each and every book purchased by them though its value may not be very significant. It has resulted in additional book-keeping for these professionals. Also, the revenue does not gain from such an amendment as the expenditure on books by professionals would not be material.	<i>In view of the above, it is suggested that the depreciation on books purchased by professionals be restored to its original rate of 100 per cent</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
	b) Section 32 - Depreciation in	The proviso to section 32 provides that the aggregate	a) <i>Section 32 may be amended to clarify the</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	case of slump sale	<p>deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the de-merged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets <i>were used by them</i>.</p> <p>The following issues may be considered for appropriate amendment in the law :</p> <p>a) An issue arises whether depreciation can be claimed on the basis of</p>	<p><i>legal position as to whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale also considering the proviso to section 32 read with section 170 of the Act.</i></p> <p><i>b) Due to practical and administrative difficulties, there may be a time gap between holding of the asset and using the asset so transferred. To avoid genuine difficulties in such cases, instead of the words, "used by them", the words "held by them" may be substituted in the proviso to section 32.</i></p> <p>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act.</p> <p>b) As per the current provisions of proviso to section 32 the depreciation can be claimed on the basis of proportionate number of days for which the assets were used by the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be.</p> <p>Due to practical and administrative difficulties, there may be a time gap between holding of the asset and using the asset so transferred. To avoid genuine difficulties in such cases, instead of the words, "used by them", the words "held by them" may be substituted in the proviso to section 32.</p>	
	c) Incentive for installation of Solar Power generating	Presently, the whole country is confronted with the problem of power cut. In order to curb this problem, solar power generating	<i>It is suggested that an incentive may be given in the Income-tax Act, 1961 for installation of solar power</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	devices	devices may be installed, the cost of which is also affordable. An incentive provided by the Income-tax Act for installation of such devices would motivate people to take initiative and would in turn enable the Government to tackle the power problem effectively.	<i>generating device. In other words, 100% depreciation may be allowed to Companies in respect of installation of such devices. A deduction of the amount so invested may also be given to Individuals and HUFs who install such devices including salaried class.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
	d) Depreciation on "Oil Well"	As per the provisions of the Income-tax Act, the "oil well" is considered as a "Building" and not Plant and machinery and depreciation is accordingly, allowed at rate of 10%. In the exploration of Oil and Gas, drilling of oil is a major activity and Oil well is a key "Plant and machinery" for Oil and gas exploration. Since, the inclusive definition provided in the notes forming part of Appendix-I "Table of rates at which depreciation is admissible" provides that "building" includes roads, bridges, wells and tubewells, the Oil wells are also being given a treatment of a "building" rather than a "plant and machinery". There is a vast difference between a normal well and an 'oil well'. As it is understood in common parlance, well is a hollow made to hold and preserve the water and it is lined by bricks and cement. However, an oil well is significantly different	<i>In order to avoid unnecessary litigations, it is suggested that necessary amendment be made in the Income tax Act to classify oil well as a plant and machinery.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>and more scientific and serves larger purpose than a water or tube well. Oil wells are not normal wells since development of the same requires special equipment and knowledge skill. An oil well is made up of various machineries and cementing is just the process to strengthen the structure of such well and therefore, oil wells cannot be considered as a building.</p> <p>It may be noted that a special rate of depreciation @60% is available for mineral oil concerns in clause 8(xii) of the aforesaid appendix as depreciation on "plant and machinery". Since the intention of the lawmakers is to promote oil industry, it is felt that the definition of "building" is being misinterpreted to include "oil wells" .</p>	
58.	Additional Depreciation u/s 32(1)(ia)	<p><i>With a view to give a boost to the manufacturing sector, the Finance Act, 2002 allowed a deduction of a further sum equal to fifteen per cent of the actual cost of such machinery or plant acquired and installed after a specified date in the case of a new industrial undertaking in the previous year in which it begins to manufacture or produce any article or thing or in the case of an existing industrial undertaking in the previous year in which it achieves substantial expansion by way of increase in the installed capacity by not less than twenty five per cent.</i></p>	<p><i>It is suggested that an express provision may be incorporated in the Act for the allowance of the remaining 10% additional depreciation in the next year so that a number of litigations may be avoided.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p><i>In order to give a thrust to investment in manufacturing sector, the limit for increase in installed capacity was reduced from 25% to 10% by the Finance Act (No.2),2004.</i></p> <p><i>Further, in order to encourage new investment, the Finance Act, 2005 increased the initial depreciation on new machinery and plant to 20 per cent. from 15 per cent. The requirement of creating a minimum increase of 10 per cent. in installed capacity for availing the initial depreciation was also eliminated. This amendment accordingly, applied in relation to assessment year 2006-07 and subsequent years.</i></p> <p><i>From all the above amendments, the intention of the lawmakers was clear i.e. encouraging the investment in the business of manufacture or production of any article or thing. The Finance Act, 2013 further extended the benefit of this section to the business of generation or generation and distribution of power.</i></p> <p><i>As mentioned above additional depreciation under section 32(1)(iia) is admissible @ 20% on the cost of the new investments. However, the same is reduced to 10% in case of additions which are used for less than 180 days in the year of acquisition. There is no express provision for the allowance of the remaining 10% in the next year.</i></p>	



The Institute of Chartered Accountants of India

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		<p><i>As mentioned earlier, section 32(1)(iia) was introduced in the Act with a specific purpose / object of providing relief to assesseees who make investment in the new plant and machinery. The section therefore has to be interpreted keeping in view the intent and purpose for which it was introduced. It is a cardinal rule of interpretation that a beneficial provision should be given a liberal and purposive interpretation so as to fulfill the object of the legislation and comply with the legislative intent. The Delhi Bench of the Tribunal in the case of DCIT v/s. Cosmo Films Ltd. [ITA No 2831/Del/2007] inter-alia had examined the provisions of section 32(1) as to whether the balance additional depreciation under section 32(1)(iia) can be claimed in the succeeding year. The Tribunal held in favour of the assessee and allowed the claim of the balance additional depreciation in the subsequent year to the assessee. It observed that this provision has been directed towards encouraging industrialization by allowing additional benefit to the tax payers setting up new industrial undertakings/making more investment in capital goods. Thus, these are incentives aimed to boost new investments in setting up and expanding the units.</i></p>	



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
59.	Section 35(1)(ii) and 35(1)(iii)- Removal of discrimination u/s 80GGA	<p>In case of assesseees having 'Income from Business or Profession', donations to the institutions approved u/s 35(1)(ii) and 35(1)(iii) are eligible for deduction @ 175% of the amount of donation. However, in case of assesseees not having 'Income from Business or Profession', donations to the institutions approved u/s 35(1)(ii) and 35(1)(iii) are eligible for deduction under section 80GGA @100% of the amount of donation only.</p> <p>In fact, this mistake crept in at the time of amendment of Section 35(1)(ii) and (iii) w.e.f. 1-4-2000 without corresponding and simultaneous amendment in section 80GGA. This was an inadvertent omission which needs to be rectified by making the necessary amendment in Section 80GGA so as to allow an enhanced deduction to other assesseees also. In fact, other assesseees who do not have Business/ Professional income deserve to be encouraged more to invest for such purposes.</p>	<p><i>Deduction at an enhanced percentage be provided in section 80GGA to all assesseees in line with deduction provided in section 35(1)(ii) and 35(1)(iii) which is available to an assessee having income from business or profession.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
60.	<i>Deductibility of R&D expenditure incurred by software development companies under Section 35(2AB)</i>	<p>The Income-tax Act provides for a weighted deduction of 200% of the expenditure incurred on scientific research on in-house research and development facility on obtaining an approval from the Department of Scientific and Industrial Research ("DSIR"). To be eligible for such deduction, the Companies should be engaged in the activity of manufacturing or</p>	<p><i>A clear policy on what constitutes R&D activities in the software product industry to be issued to DSIR. Attached is a document which defines R&D in a software product industry, which may be considered. In line with the attached document, it is suggested that R&D in the software product industry be</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>producing an article/ thing.</p> <p>While it is fairly arguable that development of software products qualifies as 'production' of article or thing, there is no clarity in the Income tax Act. While a few software product development company have been recognised by DSIR, there have been reservations in granting approval due to ambiguity of R&D in software development</p>	<p><i>notified / clarified (Annexure II)</i></p>
61.	Expenditure on Specified Business under section 35AD	<p>Section 35AD was introduced with effect from A.Y. 2010-11 to switch over from profit linked incentives to investment linked incentives under the Income-tax Act, 1961 as the profit based incentives were distorting the tax base. Investment based incentives do not put the Government in a disadvantageous position as these incentives only postpone the payment of taxes and give relief to the tax payers in the initial years by granting deduction for the CAPEX which would have been otherwise allowed by way of depreciation over a longer period. Accelerated deductions @150% were allowed under Section 35AD of the Income-tax Act for specified core businesses with effect from A.Y. 2010-11 with a view to creating rural infrastructure. This incentive should be provided to other core businesses as well, which are essential for the growth of the economy. Apart from the new entities incurring expenditure,</p>	<p><i>It is suggested that following businesses are required to be covered under this provision and to achieve this, the following sub-clauses be added after sub-clause (viii) of clause (c) of sub-section (8) of section 35AD:</i></p> <p><i>“(ix) Power generation and Distribution</i> <i>(x) Petroleum & petrochemicals</i> <i>(xi) Steel</i> <i>(xii)Cement</i> <i>(Xiii) Port Facilities</i> <i>(Xiv) Telecommunication and allied services”</i></p> <p><i>Granting of section 35AD benefit to the aforesaid sectors will ensure rapid development of infrastructure across the country, creation of employment opportunities and easy flow of foreign funds for the debt ridden sectors. Considering the need for greater penetration and infrastructure development in such areas enhanced rate of</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		even existing entities incurring capital expenditure for substantial expansion of these essential core activities incurred by existing entities should also be allowed the accelerated deductions as substantial capital infusion is required periodically to sustain their viability.	<i>deduction (1.5 times) under 35AD (1A) for the capital expenditure.</i>
62.	(a) Capital raising expenses	Expenses incurred for raising capital are being treated as capital in nature and no deduction is allowed in tax assessment. Section 35D provides for deduction in respect of some of the expenses, over a period of five years, subject to conditions and limits. Raising capital is necessary activity for carrying out the business activity. Not allowing deduction of expenses for raising capital increases cost of carrying out the business and adversely affects the competitiveness of the business	<i>Section 35D should be amended to allow deduction for all expenses incurred by an assessee for raising capital in five equal installments over a period of five years.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
	(b) Amortization of Capital expenditure	Cash outflows by way of capital expenditure logically reduce the income. However, certain preliminary expenditure allowed to be amortised under section 35D, there is no provision in the act for amortization of capital expenditure like fees paid for increase in authorized share capital and payment made towards elimination of competition etc. Such expenditures being capital in nature cannot be charged to revenue as there is no provision for claiming these expenses in	<i>It is suggested that provisions may be incorporated in the Act to allow amortisation of such capital expenditures which are essential to run the business.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		computing the income. As a result there is a difference between real income & taxable income.	
63.	Deduction for payments under Voluntary Retirement Scheme – Section 35DDA:	Under Section 35DDA, deduction @ 1/5 th of the amount paid to the employees is allowed in respect of payments made to employees under voluntary retirement schemes. Thus, the deduction is allowed over a period of 5 years. This section covers "payment of any sum to an employee at the time of his voluntary retirement." Many companies have structured different schemes to give voluntary retirement to their employees. Some of them are in the nature of monthly pension or payments spread over a few years. Many corporate would like to fund these monthly pension, etc. by purchasing an annuity with LIC/any other insurance company. It is submitted that when the annuity is purchased for covering such payments, deduction @ 1/5 th shall be allowed under Section 35DDA of the Income-tax Act, 1961.	<p><i>Section 35DDA(1) may be re-worded as follows:</i></p> <p><i>"Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement or purchase of an <u>annuity from an insurance company to cover such payments</u>, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted....."</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
64.	Due date for crediting the contribution of employees to the respective fund–Section 36(1)(va) read with Section 2 (24)(x):	Section 2(24)(x) of the Act, inter alia defines "Income", to include any sum received by the employer from its employees' as contribution towards certain specified funds. However, deduction for such income are available under section 36(1)(va), provided that the	<i>It is suggested that the due date defined under Explanation to Section 36(1)(va) shall be amended and accordingly the due date shall mean the due date for filing return of income under section 139(1), thereby bringing it at par with the due date specified for the</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>contributions collected by the employer are credited to the respective fund within the due date specified under the relevant legislation of the fund.</p> <p>The employee's contribution credited to the employees account in the relevant fund after the due date specified under section 36(1)(va) are disallowed to the employer. Further, any payments made by the employer after the due date is also NOT allowed as a deduction in the year of payment. This causes undue hardship to the assessee especially during the economic turbulence.</p> <p>Further, the Employer's contribution made after the due date specified under the relevant social security legislation but deposited within the due date of filing return of income are allowed under the Act by virtue of Section 43B.</p> <p>It may be noted that the statutory laws under the respective contribution schemes have provisions to levy interest, penalty etc. for the delayed payment. Hence, disallowing a genuine business expenditure merely on the ground that it has been paid after relevant due date is not justified.</p> <p>On the subject there have various conflicting judgments. Where Honble Uttarakhand High Court and Honble Delhi High Court have considered the due date under section 36(1)(va) to</p>	<p><i>Employer's contribution under Section 43B of the Act.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>be read in sync with the due date mentioned in section 43B, Honble Gujarat High Court has given a different view.</p> <p>To remove the hardship caused to the assessee and to reduce avoidable litigations, it is suggested that deduction be allowed on the employee's contribution made before the due date of filing the return of income.</p>	
65.	NPA calculation for NBFCs	<p>Under section 36(1)(viiia) of Income-tax Act, only the banks and financial institutions (FIs) are allowed a deduction on provisions for bad and doubtful debt. A deduction of 7.5% of gross total income is allowed as expenses for banks, if provision for bad and doubtful debts is made as per RBI directions, and for FIs the figure is 5%.</p> <p>It is pertinent to note that even the foreign banks are allowed the benefits under this section of Income tax Act, but the NBFCs are excluded, and this despite the fact that both NBFCs and banks are regulated by similar guidelines and there is in fact no material difference between the businesses carried out by NBFCs and banks.</p> <p>In absence of specific inclusion of NBFCs in section 36(1)(viiia), "provision for NPA" made in terms of RBI prudential norms does not constitute an expense for purposes of Income tax Act. So entire provisioning as per RBI</p>	<p><i>NBFCs may also be include in Sec. 36(1)(viiia) so that the benefits are also extended to infrastructure financing NBFCs.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p>prudential norms is disallowed for purposes of computing taxable income of NBFCs. Thus, NBFCs are subjected to higher taxation, and hence are at a disadvantageous position vis-à-vis banks and other FIs.</p> <p>As the Government itself considers NBFCs to be a vital channel for credit delivery especially to the under-privileged segments of the society, it is essential that such discriminations between NBFCs and banks be eliminated. This inconsistency may be resolved by including NBFCs also in Sec. 36(1)(viiia) so that the benefits are also extended to infrastructure financing NBFCs.</p>	
66.	Section 40(a)(iib) - Disallowance of certain payments made by State Government Undertaking (SGU)	<p>Section 40(a)(iib) provides that SGU will not be entitled to deduction of certain payments in the nature of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge made to State Government in computing income from business or profession.</p> <p>Section 40(a)(iib) also defines the class of entities that will be considered as SGU. One of the classes covered within the definition of SGU is a company in which State Government holds more than 50% equity.</p> <p>Denial of deduction to such SGU, which has private participation, may create discriminatory treatment between two enterprises – one of which has</p>	<p><i>In order to provide level playing field to different business units in matter of computation of business income, the amendment may be re-considered. The payments made by SGU to the Government are likely to be subject to transfer pricing regulation under section 92BA read with section 40A(2).</i></p> <p><i>In fact, the provisions of section 40A(2) may be suitably amended to ensure that the impugned expenditure is subjected to transfer pricing scrutiny, rather than disallowing the expenditure which may result in inequity between undertakings which have more than 50% State Government holding and those</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		49% as compared to 51% private participation. While disallowance will be made only in the case of the SGU, though both the entities may make identical pay-outs to the State Government.	<i>having less than 50% State Government holding.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
67.	Required clarification in respect of applicability of section 40A(3)	Payments made beyond Rs. 20,000 to a person in a day otherwise by an account payee cheque drawn on a bank or an account payee bank draft is a disallowed expense and is also required to be specifically reported in the tax audit report by the auditor. Certain difficulties are being faced with regard to the applicability of Section 40A(3) in respect of payments directly deposited into the account of the recipient by the payer located at a far place, in excess of Rs. 20,000/-. The said deposit directly in the account by the payer is being disallowed and is being reported in the tax audit report. The Central Banking system (CBS) in India allows deposit and withdrawal from any place in India. As the amount is being deposited in the banking channel through proper source, the same should not be disallowed under section 40A(3). A clarification may be issued in this regard.	<i>It is suggested that a clarification may be issued to clarify whether direct deposit into the account of the recipient in excess of Rs. 20,000/- by the debtor be subject to disallowance u/s 40A(3) of the Income-tax Act, 1961.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>
68.	<i>Explanation 5 to Section 43(1) - "building" to be replaced by "assets"</i>	Section 43 deals with actual cost. There are 14 explanations provided in section 43(1) describing the method of computation of actual cost of	<i>In line with the other explanations to section 43(1), it is suggested that the term "Assets" be used instead of the term "building" in</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>asset under different situations. Explanation (5) deals with actual cost in respect of building previously used by the assessee for certain purposes & subsequently brought into business or profession. According to this explanation, the building so brought in should be notionally depreciated & the resultant WDV as at the date of introducing the building into business shall be deemed to be the actual cost.</p> <p>While all other explanations use the term "asset" or "capital asset", Explanation 5 uses the term "building" instead of "assets". It has therefore been held that this explanation would not apply to all other assets other than building.</p>	<p><i>Explanation 5 to section 43(1) .</i></p>
69.	Section 43A - Exchange fluctuation loss due to sharp fall in Rupee value	<p>Section 43A was inserted in the Income-tax Act, 1961 by Finance Act of 1967, which permitted Capitalization of Foreign Exchange Fluctuation Loss in the borrowing used for acquisition of assets outside India. The exchange fluctuation loss on borrowings used for domestically acquired assets is not permitted to be capitalized for tax purposes.</p> <p>The last financial year saw Rupee depreciate significantly against the US \$ severely impacting the industry particularly those who have exposure to External Commercial Borrowings (ECBs) and Foreign Currency</p>	<p><i>It is suggested that Section 43A be amended to allow Capitalization of such foreign exchange loss even for domestically acquired asset.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>Convertible Bonds (FCCBs).</p> <p>The provisions of Section 43A are similar to the provision contained in Schedule III to the Companies Act, 2013. As per 'instructions in accordance with assets should be made out' as contained in Schedule VI, vide notification No. GSR 129 dated 3-1-1968, the following instructions were inserted:-</p> <p><i>"Where the original cost aforesaid and additions and deductions thereto, relate to any fixed asset which has been acquired from a country outside India, and in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there has been an increase or reduction in the liability of the company, as expressed in Indian currency, for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of moneys borrowed by the company from any person, directly or indirectly in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability is so increased or reduced during the year, shall be added to, or, as the case may be deducted from the cost, and the amount arrived</i></p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p><i>at after such addition or deduction shall be taken to be the cost of the fixed asset.”</i></p> <p>The above provisions were deleted vide notification no. GSR 226(E), dated 31-03-2009 w.e.f. 31-03-2009.</p> <p>The Schedule VI has been amended vide Notification No. SO 447(E) dt. 28-2-2011 w.e.f. 1-4-2011. In the revised Schedule VI (as also the New Schedule III to the Companies Act, 2013), under the heading “General Instructions” Sr. No. 1 it is stated as under:</p> <p><i>“Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head/sub-head or any changes inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements of the Schedule VI shall stand modified accordingly.”</i></p> <p>The Accounting Standards have been notified vide notification GSR 739(E) dt. 7-12-2006. For the above purpose the relevant Accounting Standard is AS-11 ‘The Effects of Changes in Foreign Exchange Rates’</p> <p>Para 46 and Para 46A of AS-11 were inserted vide notification no G.S.R. 225(E) dated 31st March,</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		2009 and G.S.R. 914(E) dated 29 th December, 2011 respectively. The effect of these notifications is that foreign exchange difference on foreign loans can be capitalized to the cost of the depreciable assets even if the assets are acquired in India. No distinction is made whether the assets are imported or are purchased within India.	
70.	Provision for leave salary – Section 43B(f)	<p>Section 43B(f) provides for deduction in respect of any sum payable by the employer as leave salary on payment basis only. At the time of insertion of section 43B(f), Accounting Standard-15 “Employees benefit” was not into existence. As per the AS-15, leave salary can be differentiated as “short term benefit” and “long term benefit”. Short term benefits are allowed to be expensed off during the year. However, long term benefits are treated as “defined benefits plans” and are valued on actuarial valuation. It may be noted that the said AS is also notified under the Companies Act by National Advisory Committee on Accounting Standards and is required to be mandatorily followed by all companies.</p> <p>Allowing deduction in respect of long terms benefits arising due paid leave only on payment basis may be inappropriate. Thus, it is suggested that the deduction for leave salary liability may not be</p>	<p><i>Clause (f) of section 43B may be deleted. Further, deduction for provision made towards leave salary liability based on actuarial valuation may be allowed.</i></p> <p><i>Alternatively, on the lines of gratuity and pension funding, necessary provisions may be included in the Income-tax Act for funding of the leave salary liability and deduction should be allowed on such funding.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		linked to actual payment.	
71.	Section 43CA - Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.	<p>This section provides for adoption of stamp duty value in case of transfer of land or building or both held as stock-in-trade. Several issues that may crop up due to implementation of this section in its present form and suggestions thereof are as under:</p> <p>a) This amendment encourages structuring of real estate transactions in such a manner to circumvent increased tax liability arising on account of adoption of stamp duty value. For example- Having agreed to sell the property at Rs. 80 Lakhs, as against the value of Rs. 100 Lakhs considered for stamp duty purposes, the transaction may be structured to record the transaction value at Rs.100 Lakhs with a rebate of Rs. 20 Lakhs.</p>	<p><i>a) The section in its present form may not be desirable and may lead to structuring of transactions. Thus, the provision of this section needs to be reconsidered.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
		<p>b) This provision results in double taxation of income,since, the difference between the stamp duty value and actual consideration would be taxable in the hands of the seller. However, the buyer can claim only the actual cost as deduction while computing his business income or capital gains arising at a later point of time when he sells the asset.</p>	<p><i>b) Suitable provisions may be incorporated in the statute so that the same income is not subject to tax twice.</i></p>
		<p>c) This section provides for adoption of stamp duty value on the date of agreement, where the date of agreement is different</p>	<p><i>c) It may be clarified as to whether the term "otherwise than by way of cash" would include transfer by book</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		from the date of registration, provided at least a part of the consideration has been received on or before the date of agreement by any mode otherwise than by way of cash. In this context, it may be clarified whether "otherwise than by way of cash" would include transfer by book entries, transfer by Hundi, promissory notes etc. and transfer by exchange agreement.	<i>entries, transfer by Hundi, promissory notes etc. and transfer by exchange agreement.</i>
		d) Further, in a case where the year of agreement and the year of registration are different, a clarification is required as to whether the tax liability would arise in the year of agreement or year of registration or the year in which possession is obtained.	<i>d) It may be clarified as to whether the tax liability would arise in the year of agreement or year of registration or the year in which possession is obtained.</i>
		e) Since only capital assets are excluded from the applicability of this section, agricultural land which is not included in the definition of capital asset may fall within the scope of this section. Therefore, specific exclusion of agricultural land from the ambit of this provision may be provided for.	<i>e) It is suggested that agricultural land be specifically excluded from the ambit of this provision</i>
		f) This section provides for adoption of stamp duty value in case of "transfer" of land or building or both held as stock-in-trade. It may be noted that the definition of term "transfer" in section 2(47) is in relation to a capital asset only. The intended scope of coverage of the term "transfer" for the purpose of section 43CA needs to be	<i>f) It is suggested that the term "transfer" be specifically defined for the purposes of section 43CA.</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		defined.	
		g) Para 12A of the Form No.3CD i.e. Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 requires reporting of particulars of capital assets converted into stock-in-trade. A similar clause to report the particulars of transfer of land or building or both held as stock-in-trade for a consideration less than the stamp value may also be included in Form No.3CD.	<i>g) A specific clause may be included in Form No. 3CD in respect of such transactions.</i>
		h) Section 43CA provides that the stamp duty value may be taken as on the date of the agreement for transfer instead of the date of registration, provided at least a part of the consideration for transfer has been received by any mode other than cash on or before the date of agreement	<i>h) A similar provision for adopting stamp duty value on the date of agreement for transfer instead of the date of registration be inserted in section 50C also</i>
72.	Amendment in Section 43D and Rule 6EA with reference to Non-Scheduled Co-op Banks	Section 43D provides for taxability of interest on Bad and doubtful debts only when such interest is credited to Profit and Loss Account or when such interest is actually received, whichever is earlier. Section 43D is applicable only to public financial institutions, scheduled bank, State Financial Corporation, State Industrial Investment Corporation etc. As co-operative banks are not scheduled banks they are not covered by the provisions of this section. Further, Rule 6EA which is related to Section 43D talks	<i>(i) The words "or Non-Scheduled Banks" be inserted in the section 43D of the Income-tax Act, 1961 and Rule 6EA of the Income-tax Rules, 1962 be amended suitably w.e.f. 01.04.2006 and relevant to A.Y. 2007-08.</i> <i>(ii) In Rule 6EA (a)(i) the words 'six months' be replaced by "three months".</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>about Scheduled banks only. Because section 43D and Rule 6EA do not take care of Non-Scheduled Co-operative banks, these banks are treated differently than Scheduled banks. Thus, is discriminatory to the Non-Scheduled Co-operative banks.</p> <p>Further, it may be noted that Rule 6EA recognises a borrowing as a Bad and Doubtful debt only if certain specified conditions are noticed in the accounts of the borrower for a period of six months or more. However, the RBI has changed this period of six months to 90 days i.e. three months. Rule 6EA should also be amended to be in line with the RBI guidelines in this regard.</p>	
73.	(a) Section 44AA- Monetary limits to be withdrawn	<p>a) Section 44AA provides for maintenance of accounts by certain persons carrying on business or profession to enable the assessing officer to compute his total income in accordance with the provisions of the Act. Sub-section (2) to section 44AA provides for certain monetary limits for income or turnover of business or profession (i.e. income exceeding Rs.1,20,000 or sales or turnover exceeding Rs.10 Lakhs) which triggers maintenance of books of accounts. Further, the assessee which declare their income from business to be lower than deemed profits under section 44AE, 44AD, 44BB and 44BBB are also required to maintain books of accounts in accordance</p>	<p><i>Section 44AA may be amended appropriately and the limit of income of Rs.1,20,000 and turnover of Rs.10 Lakhs in any one of the three immediately preceding previous years may be withdrawn for the assessee carrying on business and declaring income as per the provisions of section 44AD and 44AE.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF THE INCOME TAX ACT, 1961)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>with the provisions of section 44AA.</p> <p>The Finance Act, 2009 made a major amendment in section 44AD and brought within its ambit all assessee carrying on businesses except the business covered under section 44AE, agency business, assessee having commission or brokerage income. As per the provisions of section 44AD read with section 44AA, only those assessee who declare their income lower than 8% of total turnover or gross receipts and whose income exceeds the maximum amount which is not chargeable to tax, are required to keep and maintain books of accounts.</p> <p>As a result the assessee having a turnover below 1 crore and declaring income on presumptive basis at 8% should not be required to maintain books of accounts as per the provisions of section 44AA. Since the monetary limits (as mentioned above) provided in section 44AA(2) are not in alignment with the limit of Rs.1 crore as provided in section 44AD, difficulty is being faced by assessee carrying on business as they are required to maintain books of accounts if their income from business or profession exceeds Rs.1,20,000 which is even below the maximum amount not chargeable to tax.</p>	
	(b) Rule 6F- Upward revision	b) Rule 6F of the Income-tax Rules, 1962 provides for books	<i>Considering the prevailing inflationary conditions in India,</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	of limit of Rs.1,50,000	<p>of accounts and other documents to be kept and maintained by persons carrying on certain professions. The proviso to Rule 6f(1) provides that this rule will not apply in relation to any previous year if the total gross receipts from the profession do not exceed Rs.1,50,000 in any one of the three years immediately preceding the previous year. This limit of Rs.1,50,000 was enhanced long back in the year 2000 considering the inflationary trends at that point of time.</p> <p>Considering the prevailing inflationary conditions in India, this limit needs an appropriate upward revision say Rs.5,00,000. Rule 6F may be accordingly amended.</p>	<p><i>the limit of Rs. 1,50,000 provided in the proviso to Rule 6F</i></p> <p><i>(1) needs an appropriate upward revision say Rs. 5,00,000. Rule 6F may be accordingly amended.</i></p> <p><i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF THE INCOME TAX ACT, 1961)</i></p>
	(c) Rule 6F(2)(iv) – requires to be dispensed with	<p>Rule 6F(2) provides the books and other documents to be maintained by the professionals. Sub-clause (iv) of Rule 6F(2) requires maintenance of carbon copies of bills exceeding Rs 25.</p>	<p><i>Clause (iv) to Rule 6F(2) clause was inserted in the year 1983. Since then, there has been phenomenal change in the working of the businesses. Nowadays, the billing is computerized and the value of transactions being entered into has increased manifold times. Thus, this clause should be dispensed with.</i></p> <p><i>In case the same is continued, the value of minimum bill amount of Rs. 25 should be increased to Rs.1000.</i></p>
74.	Section 44AD- Presumptive Income – Some	<p>Section 44AD was introduced w.e.f. 01/04/2011 i.e. from AY 2011-12. According to the</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	Issues	provisions, in case of an eligible assessee engaged in eligible business, income shall be deemed equal to a sum @8% of the turnover or higher income as per books. Section 44AD is applicable to any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE and whose total turnover or gross receipts in the previous year does not exceed an amount of Rs. 1 crore.	
	a) Maintenance of Books of Account	<p>The general interpretation taken from the reading of the section is that once a deemed income @8% is returned u/s 44AD, the assessee will not be required to maintain any accounts as required u/s 44AA.</p> <p>There is a provision u/s 44AD(5), that if the income is less than 8% then books will be required to be maintained and audited. Unlike the provision in the erstwhile 44AD(4), there is no direct positive provision in present section 44AD to the effect that section 44AA and section 44AB will not apply and that the turnover covered under section 44AD will be excluded for the purposes of calculating the turnover u/s 44AB.</p> <p>Such ambiguity has developed confusions and apprehensions in the minds of the assesseees who are covered by the section.</p>	<p><i>The section may be amended or suitable provision be inserted so as to clarify the intentions of the section. The erstwhile sub-section 4 read as under:</i></p> <p><i>“The provisions of section 44AA and 44AB shall not apply in so far as they relate to the business referred to in the sub section (1) and in computing the monetary limits under those sections, gross receipts or as the case may be, the income from the said business shall be excluded.”</i></p>
	b) Eligible Business	<p>As per the section 44AD eligible business means:</p> <p>i) Any business except the business of plying, hiring or</p>	<p>a) <i>Section 44AD may be amended to clarify whether the receipts of Rs.1 crore under section 44AD intend</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		<p>leasing goods carriages referred to in section 44AE; and</p> <p>ii) Whose total turnover or gross receipts, in the previous year does not exceed an amount of one crore rupees.</p>	<p><i>to cover the receipts of a single business or aggregate receipts of all businesses. As singular includes plural, a clarification is required in this regard. The difficulty being faced can be illustrated by way of following example:</i></p> <p><i>Suppose an assessee "A" is engaged in four different businesses. The individual turnover of each his businesses are as under:</i></p> <p><i>a) Business I (Retail trade of cloth) RS. 30 Lakhs</i></p> <p><i>b) Business II (Manufacturing of tyres) Rs. 25 Lakhs</i></p> <p><i>c) Business III (Running a sweet shop) Rs. 35 Lakhs</i></p> <p><i>d) Business IV (Advertising agency) Rs. 15 Lakhs</i></p> <p><i>The aggregate turnover of all four businesses amount to Rs. 105 Lakhs. In such a situation, if the assessee opts for section 44AD for all four businesses, a clarification is required whether or not he will be liable to get his accounts audited under section 44AB of the Income-tax Act, 1961.</i></p> <p><i>b) The provisions of section 44AD should not be made applicable for all businesses. The scope of section 44AD may be clearly defined to cover particular businesses only. Further, in such a case, the treatment regarding set off of unabsorbed depreciation of the</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
			<i>non-eligible business against the profits of eligible business, also be clearly laid down.</i> <i>c) Further, it may also be clarified whether the provisions of section 44AD would be applicable for loss making business and businesses having income below taxable limit.</i>
	c) Applicability of section 44AD	<p>The Finance Act, 2012 had inserted sub-section (6) with retrospective effect from 1st April, 2011 to clarify that the presumptive tax provisions under section 44AD shall not be applicable to, inter alia, persons earning income in the nature of commission or brokerage or persons carrying on an agency business.</p> <p>Further, the section 44AD(6) apparently seems to exclude the applicability to persons carrying on profession, agency business and earning commission or brokerage. It is possible that such persons have other businesses eligible for presumptive taxation under section 44AD. Therefore, it is suggested that the definition of "eligible business" be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.</p>	<i>It is suggested that Instead of inserting sub-section 44AD(6), the definition of "eligible business" be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.</i>



PART E-CAPITAL GAINS

Sr. No	Section	Issue/Justification	Suggestion
75.	Revision in date of determination of Fair Market Value	As per the existing provisions of the Act, in case of specified capital assets acquired before 1 st April, 1981, the cost of acquisition for such assets for the purpose of capital gain can be taken either the fair market value of such asset prevailing on 1 st April, 1981 or the actual cost of such asset. The determination of fair market value as of 1 st April, 1981 especially for land becomes arbitrary & leads to litigation. Hence, there is a need to revise the date for determination of fair market value.	<i>The date for determination of fair market value should be revised to a relatively recent time frame (such as 1st April, 2001) instead of 1st April, 1981.</i>
76.	Limited Liability Partnership (LLP)- (a) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.	LLP though named as Limited Liability Partnership but for all practical purposes it is a body corporate having perpetual succession. As business grows there will be merger, amalgamation, demerger of LLP's as well. At present merger and amalgamation of companies is Revenue neutral.	<i>It is suggested that similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
	(b) Taxability on conversion of firm into LLP- Clarification required	The Finance Act (No.2), 2009 introduced the taxation scheme relating to Limited liability Partnerships. It provided that a "limited liability partnership" and a general partnership be accorded same tax treatment. i.e. taxation in the hands of the entity and exemption from tax in the hands of its partners. Accordingly, the definition of the term 'firm' was	<i>In view of the above, it is suggested that a specific provision be incorporated in the Income-tax Act, 1961 itself clearly specifying that the conversion from a general partnership firm to an LLP will have no tax implications.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>amended to include within its meaning a limited liability partnership.</p> <p>The memoranda explaining the introduction of such taxation scheme for LLPs also provided the following:</p> <p><i>“As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 shall apply.”</i></p> <p>Although, the memoranda provided that the conversion from a general partnership firm to an LLP will have no tax implications, no specific provision clarifying the same has been incorporated in the Income-tax Act, 1961.</p>	<p><i>LAWS)</i></p>
	<p>(c) Consequential amendment required in section 47(xiiib)</p>	<p>The existing section 47 (xiiib) provides that no capital gains tax is payable on conversion of a private limited or unlisted public company into LLP subject to certain conditions. Proviso (e) states that this provision will not apply if the total sales, turnover or gross receipts in the business of any of the three preceeding years exceed Rs. 60 lacs. Since this is an amendment</p>	<p><i>One fallout of the new Company Act is that lot many companies are now converting themselves to LLP. With a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		to facilitate conversion of private limited companies and unlisted companies into LLPs, ideally, there should be no restriction on the turnover to avail the benefit of section 47(xiiib). It may also be noted that the parent Act i.e. Limited Liability Partnership Act 2008, allows this conversion without any such restrictions.	<i>under section 47(xiiib). (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
77.	Section 49 - Cost of acquisition with reference to certain modes of acquisition	<p>Section 2(42A) defines the term 'short term capital asset'. Clause (i) (b) of Explanation 1 to Section 2(42A) provides that in case a capital asset becomes the property of the assessee in the circumstances mentioned on Section 49(1), there shall be included the period for which the asset was held by the previous owner. Further, Section 49(1) refers to certain modes of acquisition wherein the cost would be substituted by the cost of the previous owner.</p> <p>Section 49(1)(iii)(e) covers corporate restructurings such as amalgamations, but does not include a reference to a demerger. As a consequence, where a capital asset of the demerged company is transferred to a resulting company, the resulting company would not get the benefit of a period of holding of the demerged company.</p> <p>The government recognized the importance of demergers in the corporate sector and introduced various amendments to the Act vide Finance Act 1999 to facilitate</p>	<p><i>Section 49(1)(iii)(e) to be amended to include reference to demerger which is exempt under Section 47(vib) and (vic). (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>corporate restructurings through demergers. The Memorandum explaining the provisions of the Finance Bill 1999 had specifically stated that the amendments have been made on the principles that the demergers should be tax neutral and should not attract any additional tax liability.</p> <p>However, the omission of Section 47(vib) and (vic) in Section 49(1)(iii)(e) would mean that when a capital asset is transferred to the resulting company in a scheme of demerger, holding period of the capital asset would commence from the date of demerger and period for which the capital asset was held by the demerged company would not be considered.</p> <p>Accordingly, the resulting company would not enjoy the holding period of the demerged company for the capital assets transferred in the demerger, as are available for other corporate restructurings such as amalgamations. To that extent, a demerger would not be tax neutral transaction.</p> <p>It seems that the omission of demerger sections in Section 2(42A) r.w. Section 49(1)(iii)(e) seems inadvertent and not in sync with the objective of the introduction of the amendments as stated in the Memorandum.</p>	
78.	Forfeiture of Advance Money u/s 51	Section 51 provides for deduction of actual amount (without indexation) of advance or other	<i>In order to provide relief to the assessee, any forfeited money in respect of any long term</i>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		money received and retained by the assessee on previous occasions of negotiating the sale of capital asset, from Cost of Acquisition and indexation is done thereafter based on the CII for the year in which the asset was acquired/ first held by the assessee . The assessee in effect is deprived of the full benefit of indexation which may not be correct intent of the law.	<i>capital asset should be allowed to be deducted after Indexation, if any, from date of forfeiture to the date of sale.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
79.	Section 54- Investment in residential house	Several disputes are in existence as to whether an assessee can buy more than one house under provisions of section 54 of the Income-tax Act, 1961. In the recent times High Courts and ITAT have taken a consistent view that in order to avail the exemption u/s 54 of the Act, investment in a "residential house" is required to be made. Here a residential house means a "dwelling unit", which may encompass more than one flat or living places, if all of them together are meant for one family for living together. It is submitted that permitting investment of the sale proceeds in more than one house properties when the need of housing is increasingly felt due to increase in population, would be a step in the right direction. Even otherwise, investment upto Rs. 50, 00, 000 is encouraged and allowed u/s 54EC of the Act.	<i>It is suggested that a provision be introduced whereby acquisition of more than one house be eligible for exemption u/s 54.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
80.	Certification of deductions	a) At present deductions u/s 54, 54F, 54EC etc. are not subject to	<i>It is suggested that the assessee claiming deduction</i>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
	<i>claimed under section 54, 54F, 54EC etc</i>	any audit or certification. The possibility that the assessee claims inaccurate amount of deduction under such provisions cannot be ruled out. In order to reduce such possibility of furnishing of inaccurate particulars by the assessee and further to reduce the burden of the Department in scrutinising such claims made by the assessee in his return, it is suggested that such provisions may be amended to require the assessee to obtain a certificate from an Accountant certifying the accuracy of the claim. Further, a ceiling may be created for deductions u/s 54, 54F, 54EC etc. that deduction amount in excess of Rs. 30 lakhs in aggregate may be certified by a Chartered Accountant.	<i>exceeding a specified amount under the provisions of section 54, 54F, 54EC etc may be required to obtain a certificate from a Chartered Accountant certifying the accuracy of the claim.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
81.	<i>Withdrawal of deposit from capital gain scheme account</i>	b) Section 54, 54B, 54D, 54F and 54G allows the assessee to deposit capital gain/sale consideration, as the case may be, not appropriated by the assessee for the purchase of a new asset as per the provisions of the respective section, in a capital gain scheme account with a bank/institution as may be specified by the Central Government. In order to claim exemption under the respective sections, the amount is required to be deposited before the due date of filing return of income under section 139(1). The amount so deposited is to be utilised within the specified period for the	<i>Since there is no check on the withdrawal from capital gain scheme account and utilisation thereof for specified purposes, the provision is being misused and leading to avoidance of tax. In order to prevent the misuse, tax @1% should be deducted at source from any withdrawal from the capital gain scheme account. To avail the credit of the tax so deducted, the assessee should be required to make appropriate disclosures in the ITR form.</i> <i>(SUGGESTION TO INCREASE THE TAX BASE)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>specified purpose. In case the same is not done, the exemption of capital gain so provided earlier is withdrawn and the amount becomes chargeable to tax after the expiry of the specified period.</p> <p>Since there is no check on the withdrawal from capital gain scheme account and utilisation of the amount so withdrawn for specified purposes, the provision is being misused and leading to avoidance of tax. In order to prevent the misuse, tax @1% should be deducted at source from any withdrawal from the capital gain scheme account. To avail the credit of the tax so deducted, the assessee should be required to make appropriate disclosures in the ITR form.</p>	
82.	<i>Issue on capital gain arising on the transfer of land in respect of joint development agreement</i>	<p>Section 2(47) of the Act defines 'transfer' in relation to a 'capital asset'. Clause (v) to section 2(47) states that transfer includes</p> <p><i>"any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882"</i>.</p> <p>Accordingly, the transaction where, the land owner enters into a JDA with the developer, transferring the rights over the property to the developer in some cases [as held in <i>Chaturbhuj Dwarkadas Kapadia v CIT</i> (260 ITR 491)], falls under the</p>	<p><i>In view of the above, capital gains should be taxed in the previous year in which the constructed area is received by the land owner. In case of joint development agreement, the land owner is normally not entitled to receive any consideration at the time he hands over possession of land for development. Exception to this effect may be provided in section 2(47) or section 45 in the manner in which in case of conversion of capital asset into stock in trade, the capital gain is taxable in the Previous year in which the stock is sold and not in the Previous Year in which it is converted into stock in trade.</i></p>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>definition of transfer u/s 2(47)(v) and capital gain arises in the year of transfer of property to the developer pursuant to entering of JDA. Instantly, this is an arrangement entered into which has the effect of handing over the possession, thus the transfer is said to have been taken place on the date of entering into such agreement. However, the same has caused a lot of hardship to the assesseees due to following reasons:</p> <p>a. In many cases projects are not even started for several months or years and the landowner is required to pay the capital gain tax at the agreement stage itself.</p> <p>b. In some cases builders have left the projects half way through and landowners have suffered both ways- by not getting the built up area on time and ending up paying taxes at the time of handing over of possession of land.</p> <p>c. The landowner has no choice of taking benefit of Section 54, 54F or 54EC by investing in other properties or capital gain bonds as he receives no money at the time of handing over of possession of land.</p> <p>d. At the time of handing over of possession of land, the Landowner has no money even if he wants to pay the taxes.</p>	<p><i>Further, the period for making investment for availing exemption under sections 54EC etc should be reckoned from the date of handing over the possession and not the date of JDA.</i></p> <p><i>There should be no apprehensions that the assesseees might take advantage of this method and delay obtaining letter of possession from the builder indefinitely. Safety rules can be placed by mentioning that occupancy certificate given by the municipal authorities can be treated as the date of handing over of possession.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>e. In some cases Landowners have paid taxes and the projects have been stalled, and the time for filing of revised returns is over. Landowners have no remedy in such cases.</p> <p>f. At present there is no computation mechanism for calculation of such capital gain. Should the Landowner compute the Sale consideration at Registration Value of the Land or should he calculate it by estimating the cost of construction for the Builder. Cost cannot be estimated correctly and this result in revision of the capital gain amounts at the time of scrutiny and it gives lot of room for reopening of cases.</p> <p>g. A situation may arise where the builder sells and registers a portion of undivided share in land in favour of buyers in relation to built up area falling to his share before the building is complete. The Landowner will not be able to postpone capital gain on the portion sold as conveyance deed is being executed. He will have to offer to tax capital gain arising out of the sale consideration mentioned in the Sale Deed.</p> <p>However, if the landowner sells undivided share in the retained area and registers a sale deed for undivided share in land or for semi-finished</p>	



The Institute of Chartered Accountants of India

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		<p>structure before the building is ready for occupation, capital gain arising on this transaction will have to be offered to tax separately as and when sale deeds are registered or property is handed over, whichever is earlier. This transaction has nothing to do with the capital gain arising out of the Development Agreement.</p> <p>h. Builder is handed over the possession only for the purpose of construction, which cannot be construed as transfer of title to him as long as the Landowner does not get possession of his built up area.</p>	
83.	<i>Section 54EC- Capital gain not to be charged on investment in certain bonds</i>	<p>Section 54EC provides that the capital gains arising from the transfer of a long term capital assets will be exempt, if the whole or part of the capital gain, is invested in the long term specified assets at any time within a period of six months after the date of transfer. Further, proviso to this section provides exemption shall be available only when investment made in long term specified asset by an assessee during any financial year does not exceed Rs. 50,00,000/-.</p>	<p>a) <i>As the financial year may differ from assessee to assessee, it is suggested that the term "financial year" be substituted with the term "previous year".</i></p> <p>b) <i>Considering the inflationary conditions in the economy, it is further suggested that the said limit of Rs.50 Lakhs may be raised to Rs. 1 crore.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
84.	<i>Exemption under section 54 & 54F</i>	<p>a) Under Section 54 of the Income-tax Act, if an assessee who has earned a Capital Gain on sale of a residential house, has, within the prescribed period,</p>	<p>a) <i>In order to avoid avoidable litigation, a Circular on the said subject be issued clarifying that in a case where an assessee has entered into a Registered</i></p>



The Institute of Chartered Accountants of India

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		<p>purchased or constructed another residential house, then, to the extent of the cost of the new residential house, no tax in respect of such Capital Gain is payable. There is a similar provision under Section 54F under which the Capital Gains arising on transfer of ANY long term capital asset will also be exempt from tax, if the assessee has, within the prescribed period, purchased or constructed a residential house, to the extent of the cost of such new residential house.</p> <p>A considerable volume of litigation has arisen in the past on the issue as to 'when' exactly an assessee can be considered to have purchased or constructed a new residential house and also on the issue as to whether the acquisition of the new residential flat in an Ownership Apartments Scheme (OAS) or a Co-operative Housing Society is "purchase" or "construction". This distinction is important because, the prescribed time limits for both are different.</p> <p>The above controversy has been set at rest by the CBDT in relation to the acquisition of a flat by an allottee under the self-financing scheme (SFS) of the Delhi Development Authority (DDA) by issuing the Circular No. 471 of 15.10.1986. The Circular has clarified that in case of allotment of a flat by the DDA under the SFS, the allotment by DDA will be treated as "construction" of a residential house and that the</p>	<p><i>Agreement for Purchase of a residential flat in an "OAS" and the assessee has paid more than 50% of the cost of the residential flat within the period prescribed in Sections 54 and 54F and has, within a further period of three years obtained actual possession of the residential flat on payment of its full price, the assessee shall be deemed to have "constructed" a 'residential house' within the meaning of Sections 54 and 54F on the date on which the Agreement for Purchase has been registered and the exemption under the said Sections will be available to the assessee to the extent of the aggregate cost of the residential flat agreed to be purchased.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



The Institute of Chartered Accountants of India

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		<p>“construction” shall be deemed to have been made on the date of allotment of the flat on payment of the first installment of the price of the flat even though, full price of the flat has not been paid.</p> <p>It is submitted that acquisition of a residential flat in an Ownership Apartments’ Scheme (OAS), the plans of which have been approved by all the authorities whose approval is necessary under the law, should be treated on par with acquisition of a flat under the SFS of the DDA. On a parity of reasoning, the exemption under Sections 54 and 54F should be available to an assessee who has entered into an agreement for purchase of a residential flat with a Real Estate Developer (RED) and he will be deemed to have ‘constructed’ the new residential house on the date on which the Agreement for Purchase has been registered with the Registering Authority after payment of the amount payable on signing the Agreement. To avoid misuse of the exemption, a further condition may be imposed that if the person has not paid to the RED more than 50% of the purchase price of the residential flat within the period prescribed under Sections 54 and 54F for “construction” of a new residential house, and/or, has not got actual possession of the residential flat on payment of full purchase price of the flat within a further period of three years after the expiry of the prescribed</p>	



The Institute of Chartered Accountants of India

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		<p>period, the exemption shall be withdrawn. The exemption will be to the extent of the total cost of the residential flat as per the Agreement for Purchase. The presumption is that the RED constructs the Ownership Apartment on behalf of the flat owners.</p> <p>The preponderant view taken by many Tribunals and Courts in several decided cases supports the submission made in the precedent para. See "Shashi Verma V. CIT 224 ITR 106(MP), CIT V. R.L. Sood 245 ITR 727 (DEL), Hilla Wadia . CIT 216 ITR 376 (BOM). However, some Tribunals and Courts have taken a different view. As there have been conflicting Judgements on the issue, many Assessing Officers (AO) take the view that the exemption is available only if the actual possession of the new residential house has been taken after payment of the entire cost of the residential house within the prescribed period. Some have also taken a view that when an assessee joins an "OAS" he is "purchasing" a flat and not constructing a flat. Such a view causes considerable unjustified hardship to the assessees and has resulted in a lot of avoidable litigation.</p> <p>The aforesaid view taken by some Assessing Officers strikes at the very root of the intention of the Parliament in enacting the Sections 54 and 54F for giving the</p>	



The Institute of Chartered Accountants of India

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		<p>much needed relief to assessees who need to change a residential house for various genuine and valid reasons, and they have no option but to join on "OAS". It is evident that they do not earn a real capital gain on sale of the first residential house when they have to necessarily utilize that capital gain for acquiring the new residential flat. The real estate prices have been continuously on the increase. Therefore, the new residential flat will usually cost more than the sale price of the one sold. When a person books a flat in a large OAS, he cannot be sure that the scheme will be completed within the period prescribed in Sections 54 and 54F. In most case, large OAS take a longer period for completion than the one prescribed for 'construction' in Sections 54 and 54F.</p> <p>It has been an 'oft declared' policy of the Government to take all steps necessary to reduce litigation because of the very large number of pending cases with the Supreme Court and the High Courts. On this issue, there has been considerable avoidable litigation because of differing interpretations taken by AOs, Tribunals and Courts on the question whether acquisition of a residential flat in an OAS is 'purchase' or 'construction' and when the 'purchase' or 'construction' can said to have taken place.</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>b) A major issue which needs clarification from the Department is whether or not exemption can be claimed under Sections 54 and 54F when capital gains derived from transfer of a single residential property is used for purchasing multiple residential properties.</p> <p><i>In ITO vs. Sushila Jhaveri 292 ITR (AT) 1 (Mum)(SB)</i>, Hon'ble Special Bench of Mumbai ITAT held that where more than one unit are purchased which are adjacent to each other and are converted into one house for the purpose of residence by having common passage, common kitchen, etc., then, it would be a case of investment in one residential house and consequently, the assessee would be entitled to exemption. The assessee making Investing made in two flats located at different localities in Mumbai will be entitled to exemption in respect of investment in one house only of her choice. It was further held that the expression "a residential house" in sections 54 and 54F means one residential house.</p> <p><i>In Karnataka High Court in CIT v. D. Ananda Basappa [2009] 180 Taxman 4</i> the taxpayer transferred a residential building and invested the long-term capital gain in acquisition of two residential flats situated side by side by means of two separate registered sale deeds and claimed exemption for both the residential units acquired. Both the units were in the occupation of two different</p>	<p><i>b) The issue "whether or not exemption can be claimed under Sections 54 and 54F when capital gains derived from transfer of a single residential property is used for purchasing multiple residential properties" requires clarification by the Board. Since there are several judgments on the issue, an appropriate and comprehensive clarification in this regard, will not only reduce the existing litigations but will also minimize future litigations on the issue.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>tenants. The Court held that the apartments were situated side by side and the builder had made necessary modifications to make them one unit by fixing opening door in between those two apartments. The mere fact that when the Inspector visited the premises they were occupied by two different tenants was not a ground to hold that the apartments were not one residential unit. The aspect of one registered sale deed or more than one deed could not be determinative of the building being considered as one residential unit or otherwise.</p> <p>The Court referred to section 13 of the General Clauses Act, 1897 wherein it is declared that whenever the singular is used for a word, it is permissible to include the plural. The expression 'a' residential house should be understood in a sense that building should be of residential nature and 'a' should not be understood to indicate a singular number. In <i>CIT v. Smt. Jyothi K. Mehta [2011] 12 taxmann.com 440 (Kar.)</i> decision was given on similar lines.</p> <p>In the case of <i>CIT vs. Gita Duggal (ITA No. 1237/2011)</i>; <i>Delhi High Court (decided on February 21, 2013)</i>, the assessing officer disallowed the exemption in respect of one floor out of two floors constructed by the assessee through a developer since the the floors were independent of each other and self-contained and therefore they cannot be considered</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>as one unit of residence. Accordingly, he held that the assessee was not eligible for the exemption under Section 54.</p> <p>The Delhi High Court held the following:</p> <p><i>“ Section 54/54F uses the expression “a residential house”. The expression used is not “a residential unit”. This is a new concept introduced by the assessing officer into the section. Section 54/54F requires the assessee to acquire a “residential house” and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to</i></p> <p><i>consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even</i></p>	



The Institute of Chartered Accountants of India

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		<p><i>compulsions. For instance, a person may construct a residential house in such a manner that he may use the ground floor for his own residence and let out the first floor having an independent entry so that his income is augmented. It is quite common to find such arrangements, particularly post-retirement. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit consisting of two or three bedrooms may be carved out with an independent entrance so that it can be let out. He may even arrange for his children and family to stay there, so that they are nearby, an arrangement which can be mutually supportive. He may construct his residence in such a manner that in case of a future need he may be able to dispose of a part thereof as an independent house. There may be several such considerations for a person while constructing a residential house. We are therefore, unable to see how or why the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. We do not think that the fact that the residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction under Section 54/54F. It is neither expressly nor by necessary</i></p>	



The Institute of Chartered Accountants of India

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		<p><i>implication prohibited."</i></p> <p>Since there are several judgments on the issue, a clarification in this regard may be issued by the Board. An appropriate clarification in this regard, will not only reduce the existing litigations but will also minimize future litigations on the issue.</p>	
		<p>c) The proviso to section 54F(1) provides that the nothing contained in this sub-section shall apply where (a) the assessee (ii) purchases any residential house, other than the new asset within a period of one year after the date of transfer of the original asset.</p> <p>Further, section 54F(2) provides that where an assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.</p> <p>It may be noted that the proviso to</p>	<p><i>It is suggested that the inconsistency in the sub-section(2) and proviso to the sub-section(1) and may be removed to avoid unnecessary litigations.</i></p> <p><i>In fact, in order to promote construction of residential houses, the time limit of 3 years for completion of construction should be removed.</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		sub-section (1) discourages the assessee to purchase a new house within a period of one year and sub-section (2) discourages the assessee to purchase a new house within a period of two years. There seems to be inconsistency between the two provisions of the same section.	
85.	Capital gain on transfer of residential property to be taxed in certain cases- Section 54GB	<p>The Finance Act, 2012 had inserted a new section 54GB to exempt long-term capital gains on transfer of a residential property, being a house or a plot of land, owned by an individual or HUF, if the net consideration on sale of property, is invested in equity of a new start-up SME company in the manufacturing sector which is utilised by the company to purchase new plant and machinery.</p> <p>Since this section was introduced with a view to incentivise investment in the Small and Medium Enterprises (SME) in the manufacturing sector as per the National Manufacturing Policy announced by the Government in 2011, the benefit of exemption under section 54GB should not be restricted to capital gains from sale of residential house and plot of land alone, but should be extended to long term capital gains derived from other capital assets also.</p> <p>This exemption under section 54GB can be claimed subject to the following conditions.</p> <p>(i) The investee company</p>	<p><i>It is suggested:</i></p> <p>a) <i>The benefit under section 54GB may be extended to long-term capital gains on sale of any capital asset which is invested in the equity of a new start-up SME company for purchase of new plant and machinery within the prescribed time.</i></p> <p>b) <i>Investment in existing SME company may also be considered for the purpose of such exemption.</i></p> <p>c) <i>Further, investment in LLP which satisfies the condition of SME enterprises may also be permitted, subject to conditions as may be necessary. Restrictive clauses may be inserted in line with the appropriate clauses of the proviso to section 47(xiiiib).</i></p> <p>d) <i>The restricted time limit for acquiring new plant and machinery will create difficulties and, therefore, it is suggested that the SME company may be allowed to make such investment in new plant and machinery within a period of 2 years from the date</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>should qualify as a Small or Medium SME under the Micro, Small and Medium Enterprises Act, 2006.</p> <p>(ii) The company should be engaged in the business of manufacture of an article or a thing.</p> <p>(iii) SME company should be incorporated within the period from 1st of April of the year in which capital gain arises to the assessee and before the due date for filing the return by the assessee u/s 139 (1).</p> <p>(iv) The assessee should hold more than 50% of the share capital or the voting right after the subscription in the shares of a SME company. Sometimes in case of capital intensive SME , a single co-owner may not be able to fund the said SME from his own share of sale proceeds of the property sold which will prevent formation of a new SME so as to achieve the desired objects.</p> <p>(v) The assessee will not be able to transfer the above shares for a period of 5 years. It may be noted that the lock-in period under section 54EC is only 3 years.</p> <p>(vi) The company will have to utilize the amount invested by the assessee in the purchase of new plant and machinery within a period of one year from the date of subscription in equity shares of an eligible company. If the entire</p>	<p><i>on which the assessee makes the investment in its equity shares.</i></p> <p><i>e) The period of 5 years for retaining the equity shares may be reduced to 3 years, in line with the requirement under section 54EC. Suitable exceptions for takeover/ merger/ amalgamations etc. may also be provided.</i></p> <p><i>f) Similarly, lock-in-period for plant and machinery acquired by the SME company may be reduced from 5 years to 3 years.</i></p> <p><i>g) It may be clarified that the net consideration after deduction of tax at source @1% may be required to be invested, so that there is no cash flow mismatch.</i></p> <p><i>h) In case of a Sale of joint property , the condition regarding holding of more than 50% of the share capital of the SME company by the assessee should be deemed to have been fulfilled if the co-owners of the said property hold more than 50% of the Share Capital of the SME company.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>amount is not so invested before the due date of filing the return of income by the assessee u/s 139, then, the company will have to deposit the amount in the scheme as notified by the Central Government. Thereafter, Central Government issued Notification No 44/2012, Dt 25-10-2012 in this regard.</p> <p>(vii) The above new plant and machinery acquired by the company cannot be sold for a period of 5 years.</p> <p>(viii) The above scheme of exemption granted in respect of capital gains on sale of residential property will remain in force up to 31.3.2017.</p>	



PART F-INCOME FROM OTHER SOURCES

DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
86.	Definition of the term relative- Explanation to Section 56(2) (vii)	<p>Under the existing provisions of section 56(2)(vii), any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed as income and is taxed under the head 'Income from other sources'. However, in case of any individual, receipts from specified relatives are excluded from the purview and hence, are not taxable.</p> <p>The Explanation to section 56(2)(vii) was amended by the Finance Act, 2012 so as to provide that any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation.</p> <p>The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 are attracted in respect of income from any sum of money or value of assets transferred to a non-relative. Once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient, the income from such assets should not be subject to the clubbing provisions contained in Chapter V.</p> <p>Further, it may be noted that, in relation to an "individual", the term relative, as it stands at present,</p>	<p><i>Suggestions:</i></p> <p>(i) <i>The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 should not be attracted once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient.</i></p> <p>(ii) <i>Lineal descendants of brothers and sisters of self and spouse may also be included in the definition of "relative" in line with the provisions of section 13(3).</i></p> <p>(iii) <i>The application of the provision should also be extended to the relatives of the members of HUF.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		does not include nieces and nephews. This may not be the legislative intent as they also form part of the close circle of relatives and accordingly have been considered as "relative" in the Direct Taxes Code Bill, 2010 and 2013.	
87.	<i>Section 56(2)(vii)(b) – Immovable property received for inadequate consideration</i>	<p>This section was amended by the Finance Act, 2013 to bring within its scope immovable property received for inadequate consideration, where the difference between the stamp duty value of land or building or both and the actual consideration exceeds Rs.50,000.</p> <p>This amendment has lead to double taxation of the differential amount i.e. the difference between the stamp duty value and the actual consideration would be taxable in the hands of the buyer as "Income from other sources" under section 56(2)(vii) and "Capital Gains" in the hands of the seller on account of adoption of stamp duty value as full value of consideration for transfer of property as per section 50C.</p>	<p><i>It is, therefore, suggested that immovable property transferred for inadequate consideration be kept outside the scope of section 56(2)(vii).</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
88.	<i>Exclusion of rights shares/fresh issue of shares from the ambit of section 56(2)(viiia)</i>	Clause (viiia) was inserted under sub-section 2 of section 56 of the Income-tax Act, 1961 by the Finance Act, 2010. The said clause provides that the transfer of shares of a company without consideration or for inadequate consideration would attract the provisions of section 56(2), if the recipient is a firm or a company. The purpose is to prevent the	<p><i>It is suggested that rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>practice of transferring unlisted shares at prices much below their fair market value.</p> <p>Though the intent of the legislature may not be to bring rights shares within the ambit of these provisions however, a strict interpretation of the provisions as inserted in the Act, brings rights shares within the mischief of these provisions.</p>	
89.	Valuation of shares- Section 56(2)(viib)	<p>The Finance Act, 2012 had inserted clause (viib) in section 56(2) to provide that if the consideration for shares is in excess of the fair value of the shares, the aggregate consideration received in excess of the fair value determined as per method prescribed or substantiated by the company to the Assessing Officer based on the value of its assets, would be taxable as the income of a closely held company.</p> <p>The detailed suggestions regarding the draft rule which prescribes for determination of fair market value of shares was submitted by ICAI to the Board.</p> <p>In furtherance to the same, it is submitted that the provisions of this clause should not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47. Such exemptions have been provided in relation to section 56(2)(viia).</p>	<p>(i) <i>A proviso similar to the proviso to section 56(2)(viia) should be incorporated in section 56(2)(viib) as well. Further, the proviso should also cover transactions not regarded as transfer under sections 47(vi) and 47(vib).</i></p> <p>(ii) <i>Valuation Report from an 'Accountant' may be admissible so as to determine the fair market value of unquoted equity shares.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
90.	Onus of proof in respect of cash credits consisting of share application money, share capital, share premium etc- Section 68	<p>The Finance Act, 2012 had made amendments in section 68 to provide that in case the amount credited consists of share application money, share capital or share premium, then, the explanation offered by the assessee company shall not be deemed to be satisfactory, unless the resident shareholder also offers an explanation about the nature and source of such sum so credited to the satisfaction of the Assessing Officer.</p> <p>The Memorandum while explaining the amendments proposed by the Finance Bill, 2012, clearly mentioned that section 68 is amended to provide that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as explained only if the source of funds is also EXPLAINED BY THE ASSESSEE COMPANY in the hands of the resident shareholder.</p> <p>It may be noted that as per the memorandum, the intention of the lawmakers is to place onus of proving the source of funds in the hands of the resident shareholder on the ASSESSEE Company. However, the language of the proviso to section 68 has been worded otherwise, placing the onus of explaining the source of funds in the hands of resident</p>	<p><i>First proviso to section 68 should be re-worded to provide that the source of funds in the hands of the resident shareholder is to be explained by the ASSESSEE Company or the investor to the satisfaction of the Assessing Officer.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		shareholder on the shareholder itself.	
91.	<i>Rationalization of section 69C</i>	As per Section 69C if an assessee has incurred any expenditure for which he has offered no explanation is deemed to be the income of the assessee, not allowed as deduction under any head of income.	<i>The above mentioned provision results in double taxation. Therefore, it's suggested that the provision of section 69C may be reviewed & deleted in the interest of justice.</i>
92.	<i>Section 72-Carry forward and set off</i>	At present under the provisions of section 72 of the Income-tax Act, brought forward business loss can be set off against profits and gains of business or profession carried on by an assessee up to subsequent 8 assessment years. Where any surplus arises from sale of the capital asset forming part of block of assets in respect of which depreciation has been allowed (either because the block of assets ceases to exist or because the consideration received exceeds the value of block), such surplus is regarded as "short-term capital gain" under section 50 of the Income tax Act, 1961.	<i>It is suggested that the brought forward business loss may be allowed to be set off against short-term capital gain under section 50 in subsequent assessment years.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
93.	<i>Tax incentives under Section 72A in respect of Amalgamation or Demerger (to be extended to all businesses):</i>	The tax benefits under section 72A in respect of amalgamation or demerger are currently limited to industrial undertakings or a ship, hotel, aircraft or banking. It is suggested that in the current liberalized and buoyant environment where various new sectors are growing at a rapid pace, this benefit should now be extended to all businesses including financial services.	<i>a) In the interest of the public at large, the benefit of section 72A may be extended to all businesses including financial services particularly NBFC's.</i> <i>b) Further, the provisions of section 72A may be simplified specially in respect of the conditions applicable for the amalgamating company like losses / depreciation being</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
			<p><i>unabsorbed for at least three years and holding assets on the amalgamation date upto ¾ of the book value of fixed assets held two years prior to the said date.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
94.	Section 73A - set-off of losses of specified business against non-specified business	All specified businesses eligible for investment based incentives u/s 35AD are capital intensive. Business houses commencing any specified business have to divert funds from other businesses to the specified business. When other businesses contribute towards the establishment of a specified business, it is imperative that the losses of specified business are allowed to be set off against profits of other business.	<i>It is suggested that section 73A should be modified to allow the losses of specified business under section 35D to be set off against profits of other businesses.</i>
95.	<i>Review of section 78(1)</i>	Section 78 deals with the provisions of carry forward and set off of losses in case of change in the constitution of firm or on succession. Sub-section 78(1) does not allow the firm to carry forward and set off the share of loss attributable to the retired or deceased partner. Also, by virtue of provisions of section 10(2A) the income (which includes loss) is not allowed to be considered in the hands of the person being a retiring partner of the firm.	<i>It is suggested that the same shall be allowed to be considered either in the hands of the firm or the partner so as to remove the genuine hardship of assessee.</i>





CHAPTER VIA

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME





PART B- DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
96.	Section 80CCG- Rajiv Gandhi Equity Linked Savings Scheme	<p>The deduction available in the first year for investment by a new equity investor, having gross total income of up to Rs.10 lakh, in listed equity shares or listed units of equity oriented funds under the Rajiv Gandhi Equity Savings Scheme, 2013 , is extended to a new retail investor having gross total income of up to Rs.12 lakh, for a period of three consecutive assessment years beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of equity oriented fund were first acquired.</p> <p>Further, as per section 112(2), where the gross total income of an assessee includes any income arising from the transfer of a long-term capital asset, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee. Similar provision is contained in section 111A as well.</p> <p>According to these provisions, the "gross total income" as reduced by such capital gains would be the "gross total income" for the purpose of all deductions under Chapter</p>	<p><i>Appropriate amendments may be made to clarify the real intent of the proposed amendment i.e. whether Long term capital gains taxable under section 112 and Short term capital gains taxable under section 111A needs to be excluded for determining the limit of Rs.12 Lakhs.</i></p> <p style="text-align: center;">(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>VIA. Since deduction under section 80CCG falls under Chapter VIA, this provision would also imply that for determining the threshold limit of Rs.12 lakh for availing the benefit under this section, the capital gains taxable under section 112 & 111A are to be excluded.</p>	
97.	Preventive health check up-Section 80D	<p>Section 80D was amended by Finance Act, 2012 to provide for deduction of up to Rs.5,000 in aggregate for preventive health check-up of the assessee, his family and parents. This is within the overall limit specified under section 80D.</p> <p>At present, there is a limit of Rs.15,000 in respect of medical insurance premium of self, spouse and dependent children and Rs.15,000 in respect of premium paid for parents. The above limit would be Rs.20,000 instead of Rs.15,000, where any of the persons insured are above the age of 60 years.</p> <p>With the rising cost of medical treatment, it is necessary to have an adequate insurance coverage for all members of the family. The cost of insurance coverage is also increasing, and with the increase in service tax with effect from 1.4.2012, the medical insurance products have become dearer.</p> <p>Therefore, the deduction of Rs.5,000 for preventive health check-up should be available in addition to the existing deduction for mediclaim premium</p>	<p><i>It is suggested that section 80D be appropriately amended to provide for a deduction of Rs. 5,000 for preventive health check-up of any member of the family, which is in addition to the existing limits under that section for medical insurance premium paid.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
98.	Increase in limit of deduction u/s 80DD & 80U	<p>In view of the increase in following costs, maximum deduction in respect of medical treatment of a dependent who is a person with disability u/s 80DD and deduction for persons with disability like total blindness or mental retarded or physically handicapped person u/s 80U, should be enhanced suitably:</p> <p>(a) Increase in medical cost; (b) Increase in travelling cost;</p> <p>Increase in minimum wages and difficulty in getting nurses/attendants who are charging not less than Rs. 10,000/- even in B/C type cities</p>	<p><i>It is suggested that the limit specified in section 80DD & 80U be enhanced suitably.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
99.	Section 80EE - Deduction in respect of interest on loan taken for residential house property	<p>Section 80EE provides for additional deduction of up to Rs. 1 lakh under Chapter VIA in respect of interest on housing loan sanctioned by a bank or housing finance company during the period between 1.4.2013 and 31.3.2014 for acquisition of residential house property.</p> <p>The issues emerging from the provision are as follows-</p> <ul style="list-style-type: none">➤ It may be clarified that interest on loan taken for construction of residential house property also qualifies for the additional deduction i.e. the term "acquisition" includes "construction" as well.➤ As per sub-section (2) of section 80EE, in case interest payable for the P.Y.2013-14 is less than one lakh rupees, the balance amount shall be allowed in A.Y.2015-16.	<p><i>Therefore, ideally, the benefit under section 80EE may be extended to interest on the loan taken for the first house property acquired or constructed, irrespective of the whether the housing loan is sanctioned before or after 1.4.2013. In any case, the deduction of Rs.1,50,000 in respect of self-occupied property was introduced fifteen years back and keeping in mind the inflationary conditions, the additional deduction of Rs.1,00,000 should be extended in respect of all loans, albeit for the first house property. Further, instead of providing the same as a deduction under Chapter VIA only for A.Y.2014-15 and A.Y.2015-16, the same may be provided by way of insertion of another proviso to section 24(b) for the sake of consistency.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>It may be noted that deduction under section 80EE is an additional deduction, over and above the deduction allowable under section 24. Therefore, only if the total interest exceeds Rs.1,50,000, the benefit under section 80EE itself would be available. If the interest payable is less than Rs.1,00,000, as required in this sub-section, no benefit under section 80EE would be available even during the P.Y.2013-14. Since the entire interest would be deductible under section 24 itself.</p> <p>Therefore, sub-section (2) of section 80EE may be reworded to provide that in case "<u>the deduction allowable under this section</u>" for the P.Y.2013-14 is less than one lakh rupees, the balance amount shall be allowed in the A.Y.2014-15.</p> <ul style="list-style-type: none">➤ Further, in case of extension of benefit to interest on loan taken for construction, whether interest on a new loan sanctioned during the said period to repay an earlier loan in respect of a house property under construction would be eligible for deduction is another issue requiring clarification.➤ The section, in its present form, does not extend the benefit to interest on housing loans taken from employer, unless the employer happens to be a bank or financial institution.➤ The restriction of eligibility for	<p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>deduction under this section to housing loans sanctioned on or after 1.4.2013 results in inequity vis-à-vis persons whose home loans were sanctioned before 1.4.2013 in respect of the first house property. It is possible that in many cases where loan is sanctioned prior to 1.4.2013 in respect of the first house property, the amount is yet to be disbursed or even if the amount is disbursed, the person is yet to receive possession of the property.</p> <p>➤ Considering the high cost of acquisition of house properties in metro cities, the threshold limit of Rs.40 lakhs and Rs.25 lakhs, respectively, for the cost of property and loan sanctioned, for availing the benefit of section 80EE is impracticable and non-workable. Further, since the banks generally give loan upto 85%-90% of the cost of property, the threshold for loan should be appropriately increased to at least Rs. 35 Lakhs.</p> <p>Further, the threshold limit of Rs.25 lakhs is in relation to loan sanctioned. Loan disbursed would be a more realistic criterion for fixing a threshold, since the entire loan sanctioned may not be disbursed in all cases.</p>	
100.	Deduction u/s 80G - to liberalise the exemptions by	There are many charitable institutions all over India backed up by dedicated people serving the cause of poor, downtrodden,	<i>It is suggested that the ceiling of 10% on gross total income be withdrawn.</i> <i>(SUGGESTIONS FOR</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	enhancing ceilings specified	<p>handicapped - both physically and mentally, deserted women, children, orphans, destitute and aged helpless people. Even though there are many magnanimous donors who are willing to contribute to these humanitarian causes after ensuring that their donations are properly utilised, the overall ceiling of 10% of gross total income u/s 80G impedes their way to contribute liberally and encourage more and more institutions.</p> <p>It is needless to mention that the Government alone cannot achieve the socialistic goal of upliftment of downtrodden. Hence, there is a need to encourage and nurture these dedicated, service minded institutions. Since hundreds of institutions of this kind are in the field and the willing donors with large heart being limited, it is but essential to remove the ceiling so that at least the donors who want to serve the cause of humanity will not be tied up with such artificial restrictions. This freedom may even induce them to be more generous in meeting the requirements of these institutions.</p> <p>In this context, it is pertinent to note that the Income Tax Department has enough scope to exercise control over these institutions while granting recognition, issuing and renewal of exemptions u/s 80G and lastly while assessing these institutions. The provisions of Section 11(5)</p>	<i>RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>relating to investment of their funds also work as a check to avoid misuse etc.</p> <p>Also, the concept of Corporate social responsibility introduced by the Companies Act, 2013 reflects that welfare activities from private participation are being promoted. In light of the same, it is suggested that the ceiling of 10% under section 80G may be withdrawn.</p>	
101.	Donations made of any sum exceeding ten thousand rupees in cash- sections 80G and 80GGA	<p>Sub-section (5D) was inserted in section 80G and sub-section (2A) was inserted in section 80GGA to provide that no deduction shall be allowed under these sections in respect of donation of any sum exceeding Rs.10,000 unless such sum is paid by any mode other than cash.</p> <p>It is not clear from the language of these sub-sections as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or with respect to the aggregate contribution made by a person during a year to an institution or to all institutions covered under section 80G(2) or 80GGA(2).</p>	<p><i>It may be clarified as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or aggregate contributions to an institution or to all institutions covered under section 80G(2) and section 80GGA(2), respectively</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
102.	Limits of House Rent Allowance (HRA) & 80GG:	<p>As per the provisions of section 10(13A), least of the following is exempt from tax in case a salaried employee receives House rent allowance from his employer:</p> <p>i) House rent Allowance actually received ii) rent paid – 10% of salary iii) 40%/50% of salary and</p> <p>For non-salaried persons, the</p>	<p><i>Considering the prevailing inflationary conditions in India, it is suggested that the limits of both house rent deduction u/s 80GG and House rent allowance u/s 10(13A) be reviewed and enhanced.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>deduction for house rent paid is given under section 80GG wherein Rs. 2000 p.m or 25% of total income for the year, whichever is less is allowed to an assessee..</p> <p>Considering the prevailing inflationary conditions in India, there is a need to review and enhance the limits of both house rent deduction u/s 80GG and House rent allowance u/s 10(13A).</p>	



PART C- DEDUCTIONS IN RESPECT OF CERTAIN INCOMES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
103.	a) Section 80IA – Unit-wise deduction should be allowed	Plain reading of section 80IA gives the impression that deduction under section 80IA is available 'unit wise'. But, nowadays, losses of other units are clubbed to deny deduction under section 80IA of the Income-tax Act, 1961 on the reasoning that all units constitute one single business. Since total income from eligible business is loss, deduction under section 80IA is disallowed (Even when loss of other unit has been set off against profit of non eligible business income). This practice is discretionary in nature. An assessee/company who is claiming deduction under section 80IA from one unit cannot start another unit of similar business as the initial losses of new unit will get adjusted with the profits of old unit. However, if the new unit is started by another assessee/company, old unit will not suffer any disallowance under section 80IA. This put existing assessee/company into disadvantageous position vis-à-vis new assessee/company. Many Tribunal benches (Bangalore, Mumbai etc.) have already rejected this practice.	<i>A specific clarification/provision should be made in section 80 IA itself to provide that deduction under section 80IA is 'UNIT SPECIFIC'. For each unit deduction under section 80IA should be separately calculated.</i> (SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)
	b) Extension	The terminal date for power	<i>In order to ensure clarity and</i>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
	of sunset clause under section 80-IA	sector undertakings to set up, start transmission or distribution or undertake substantial renovation is to be extended by one year i.e. from 31.3.2013 to 31.3.2014. In fact, the terminal date has been extended several times in the last few years	<i>certainty as regards the period within which the undertaking should be set-up or within which it should start transmission etc. the terminal date may be extended till such time the country has acquired self-sufficiency in the supply of power i.e. the terminal date may be kept open-ended.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
	c) Benefit u/s 80IA shall be allowable to the resulting / amalgamated company in case of demerger / amalgamation	<p>Section 80-IA of the Income-tax Act, 1961 provides exemption from income tax on infrastructure projects subject to specified conditions in order to encourage investment in these areas. Sub-section (12) provides that in case of demerger or amalgamation, the benefits to the undertaking under Section 80-IA will continue in the hands of the transferee company and will cease in the hands of the transferor company.</p> <p>However, as per sub-section (12A) inserted by the Finance Act, 2007 the benefits will cease, if there is a transfer in a scheme of amalgamation or demerger, on or after 1st April, 2007. The unfortunate result of this amendment is that neither the transferor nor the transferee company will enjoy the benefit of 80-IA in case there is an amalgamation or demerger.</p> <p>The original position, under which the transferee company will enjoy</p>	<p><i>The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>the benefit in case of a demerger or amalgamation, needs to be reinstated based on the following reasons:</p> <p>(i) Incentives of this nature have been traditionally linked to a unit/undertaking/ investment, and not to an entity. It is logically so, because the objective is to incentivize an investment regardless of which entity houses that investment.</p> <p>(ii) Amalgamations or demergers are restricted forms of transfer which are also subject to (i) stringent guidelines as prescribed in the Income-tax Act, 1961 and (ii) Court supervision and approval. The benefits under 80IA used to be allowed in the hands of the transferee companies in such restricted forms of transfer. Such rationale remains valid even now and the benefits under Section 80IA may therefore, continue to be available in the hands of the transferee, like in the past, prior to insertion of Sub-section (12A) in the Finance Act 2007.</p> <p>(iii) The benefits of this section, rightly, covers a long span of 15/20 years as infrastructure projects by nature take a long time to give economic returns corresponding to their risks. In such a long span of time, the dynamic</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>and ever changing market place, especially in a growing economy like India, will necessitate a company to undergo many changes (amalgamation or demerger being some of these) in order to continue to operate efficiently. Removal of benefits like that of 80IA would lead to economic inefficiencies by preventing necessary amalgamations or demergers.</p> <p>(iv) The amendment therefore is an undue constraint and may even defeat the original purpose of encouraging infrastructure projects (especially given the long span of time), which are necessary building blocks of our economy.</p> <p>The concept of an amalgamation or demerger deserving appropriate treatment is well recognized under the Income-tax Act, 1961 which rightly provides for several benefits for such transactions including exemption from capital gains tax. Further, fiscal benefits similar to 80IA like those under Sections 80IB, 80IC or 10A of the Income-tax Act, 1961 continues to be available, rightly, even after any amalgamations or demergers, and these have not been deleted. Extending the timelines for some of these benefits years, in the Finance Act of 2011 clearly underscores and reiterates their importance.</p>	



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
104.	Incentivizing investments in respect of agricultural infrastructure	<p>There is an urgent need to invest heavily in building up of a viable and efficient infrastructure in the agriculture sector in India. This would necessitate building up of proper computerized infrastructural facilities and electronic highways for procurement, dissemination of best agricultural practices, weather information, storage practices etc. as well as offering the best possible price to the farmers. Also, this would result in cutting down intermediaries/middlemen and thereby reduce the transaction costs.</p> <p>Section 80IA of the Income-tax Act, 1961 provides for deduction in respect of profits/ gains from industrial undertakings engaged in infrastructure development. This covers road, bridge or rail, highway projects, water projects, ports, airports, telecommunication services, industrial parks and power generation. The definition of infrastructure should be extended to include rural infrastructure like:</p> <ul style="list-style-type: none">• Village kiosks housing IT infrastructure like computers, VSATs, Modems, smart cards, projectors, screens etc.• Support infrastructure like solar-panels, UPS, Batteries etc. at these locations.• Water harvesting facilities like check dams, wells ponds and other rain harvesting structures.	<p><i>The tax incentives may take the following forms:</i></p> <ol style="list-style-type: none"><i>deduction of proportionate profits for the total value of turnover arising from such computerized infrastructural facilities (in line with the provisions of section 80IA read in conjunction with section 80HHC) for purposes of simplification and avoidance of disputes.</i><i>deduction of the total expenditure incurred, both capital and revenue, for creating such infrastructure (similar to the provisions of section 35).</i> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<ul style="list-style-type: none">• Storages including farmer facility center housing training centers, cafeteria, health clinic, pharmacy, bank counters and necessary parking area.• Green houses and poly houses.	
105.	(a) Section 80JJAA – Deduction in respect of employment of new workmen	<p>As per the current provisions, any Indian company engaged in the manufacturing of any article or thing, gets a deduction of 30% for new workmen employed during the given year for three consecutive years including the year of employment. It is proposed to restrict this deduction to only those companies who have a “factory” as defined under the Factories Act, 1948. Further any factory acquired by way of amalgamation or hive off, etc. would not be eligible for these benefits. This provision would harm software industry which is the largest earning amongst others.</p> <p>In the given scenario, when the economy needs a boost from the corporate world and employment opportunities could assist in accelerating overall growth and development of the nation.</p> <p>Under such circumstances, proposing restrictions on such employment opportunities is unfair and therefore we suggest that this proposal be dropped in view of the below difficulties that may be faced:</p> <ul style="list-style-type: none">• There should be clarity to the	<p><i>It is suggested that the amendment so made be dropped in view of the above anomalies. It is recommended to state that the section should be modified to cover ‘employees employed by the industrial undertaking’</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>effect that what is the meaning of the term 'workmen' and the term 'employee'</p> <ul style="list-style-type: none">• Deduction perfected in terms of old section 80JJAA for and upto AY 2013-14 should be available for residual years even in absence of specific grandfathering• It is suggested that the blue collared employees who support the organization while being outside the factory premises may be considered as "employed in such factory"• Clarity is required where the taxpayer who is not registered under the Factories Act, whether he may be granted deduction under this section	
	(b) Section 80JJAA – Deduction in respect of employment of new workmen	Section 80JJAA which grants deduction of an amount equal to 30% of wages paid to new regular workmen employed in industrial undertaking which is engaged in "manufacture or production of article or thing" was amended by the Finance Act, 2013 to provide that deduction shall be allowed to an Indian company which is engaged in "manufacture of goods in a factory" and where new regular workmen are employed by the taxpayer in such factory.	<i>It is suggested that a suitable clause be added in Form 3CD requiring the tax auditor to certify the particulars of new regular workmen employed and the additional wages paid to them to ensure the correctness of claim under section 80JJAA.</i> (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
106.	Deduction in respect of royalty on books – Section	a) Section 80QQB provides for a deduction of income up to Rs.3,00,000/- in respect of royalty or copyright fees or lump sum consideration in respect of a	<i>Since this does not appear to be the intention, it is suggested that clause (b) of the Explanation to the section should be amended by deleting</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	80QQB	book. The term book is defined as, <i>inter alia</i> , not including commentaries. The intention appears to be to grant deduction in respect of all books of literary, artistic or scientific nature. It is possible that many books of scientific nature may be regarded as commentaries, and may not qualify for the deduction.	<i>the word 'commentaries' from the list of exclusions.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



PART CA-
DEDUCTIONS IN RESPECT OF OTHER INCOME
DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
107.	<i>Deduction in respect of interest on deposits in savings account- Section 80TTA.</i>	<p>Section 80TTA was inserted by the Finance Act, 2012 to provide deduction of up to Rs.10,000 in the hands of individuals and HUFs in respect of interest on savings account with banks, post offices and co-operative societies carrying on business of banking.</p> <p>However, it is unlikely that salaried individuals would keep their entire savings in a savings bank account, which earns a much lower rate of interest as compared to term deposits. They are likely to transfer some portion of their savings to several deposits to earn comparatively better returns. Therefore, since the money is anyway kept within the banking channels, it is suggested to include all types of deposit interest within the ambit of section 80TTA.</p>	<p><i>Interest on all types of deposits may also be included within the scope of section 80TTA.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>





CHAPTER IX
DOUBLE TAXATION RELIEF





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
108.	Applicability of Education Cess and Secondary and Higher Education Cess -Double taxation Avoidance Agreement	<p>Under the Income-tax Act, 1961, Education cess and Secondary and Higher education cess are imposed on account of the provisions contained in sub-section (12) of Chapter III of the Annual Finance Act which provides the rates of income-tax. The education cess is to be calculated on the amount of income-tax as specified in sub-sections (1) to (10) of the said Chapter. However, none of these sub-sections deal with the rate specified in DTAA, which becomes leviable by virtue of the provisions of section 90A(2). Therefore, the moot issue is whether the Education cess and Secondary and Higher education cess would be applicable where the rates specified in the respective DTAA becomes applicable by virtue of the beneficial provisions contained in section 90A(2).</p> <p>It may be noted that at the time when a Double taxation avoidance agreement is entered, the intention is to arrive at an all inclusive fixed rate of tax.</p>	<p><i>Appropriate amendment in the Act as well as ITR forms may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.</i></p> <p>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</p>





CHAPTER X
**SPECIAL PROVISIONS RELATING TO
AVOIDANCE OF TAX**





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
109.	a) Domestic Transfer Pricing [DTP] – Sections 92, 92BA, 92C, 92CA, 92D & 92E	<p>a) The Finance Act 2012 has introduced DTP in spite of existing provisions under the Act which empower the Assessing Officer (AO) to disallow unreasonable expenditure incurred between related parties (Section 40A) or re-compute the income of assessee availing profit-linked deductions if there are transactions with related parties or other undertakings of the same assessee (Sections 80A, 80-IA, similar Chapter VI-A deductions or section 10AA). These transactions are presently benchmarked against fair market value. In this regard the following points require consideration:</p> <p>Harmonization of the “related party” definitions: Presently, three different sections referred to in section 92BA and section 92A of the Act have different thresholds for determination of the ‘related party’ definitions’ which are as under:</p> <ul style="list-style-type: none">• Substantial Interest – Not less than 20% of voting power – <i>Explanation (b) to Section 40A(2)</i>• Associated Enterprises - Not less than 26% of voting power – <i>Section 92A(2)(a) & (b)</i>	<p><i>There is clearly a need for harmonization of the different thresholds for the related party definitions’ in the sections 40A(2), 92A(2) and 80A read with section 35AD(8). Necessary amendments in this regard may be appropriately made.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<ul style="list-style-type: none">• Associated Person - Not less than 26% of voting power – <i>Section 80A read with section 35AD(8)</i>	
	b) Guidance in respect of benchmarking of Directors remuneration	b) Presently, there is no guidance in respect of benchmarking of the Directors' remuneration.	<i>Since payment of directors' remuneration is subject to DTP provisions, it is suggested that there should be no restrictions on Directors' remuneration based on profits computed within the limits as specified under the Companies Act & also necessary guidance for benchmarking in respect of the same should be provided.</i>
	c) Arm's Length Price vs Ordinary Profits:	c) Section 80IA(8) deals with "ordinary profits" whereas transfer pricing compliance refers to the "Arm's Length Price" of the transactions.	<i>Conceptually, 'price principles' cannot apply for benchmarking of 'profits'.</i>
	d) Increase in the threshold limit of Rs. 5 crore	d) The threshold limit of 5 crore is too low for applicability of the Domestic Transfer Pricing provisions	<i>In order to ensure that only substantial transactions are covered under the DTP provisions, the threshold limit should be raised to Rs. 50 crore.</i>
		e) Currently, APA provisions are being made applicable to only international transactions.	<i>The same should also be made applicable to domestic transactions covered by DTP provisions</i>
	e) Documentation Requirements:	f) Where the volume of specified domestic transactions is below the threshold limit, the maintenance of documentation as required for transfer pricing should not be applicable.	<i>It is suggested that the maintenance of documentation as required for transfer pricing should not be applicable. Alternatively a threshold limit of 25 crore be introduced for TP documentation requirements.</i>



CHAPTER X-A
GENERAL ANTI AVOIDANCE RULES





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
110.	GAAR	GAAR provisions will undoubtedly have far reaching implications.	<i>To ensure that, the extra ordinary powers are not exercised by revenue officers arbitrarily or de hors the key objects behind introduction of GAAR, it is very important that the apprehensions of the taxpayers are addressed at the earliest.</i>





CHAPTER XII-

DETERMINATION OF TAX IN SPECIAL CASES





DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
111.	Removal of anomalies in sections 111A & 112	<p>At present, Long Term Capital Gain is taxed @ 20% in pursuance of the provisions of section 112. Whereas, in case of individual assessee having normal income the rate of tax upto RS. 5, 00,000 is only 10%. This leads to a situation where in case if one's gain from transfer of long term capital asset is below Rs. 5, 00,000 then also he is required to pay tax @ 20% plus cess as per section 112 whereas his tax liability otherwise would be much lesser.</p> <p>Similar is the situation in case of Short Term Capital Gain by way of sale of equity shares as provided u/s 111A, where the tax rate is 15% which is more than the minimum rate of tax payable by the individuals.</p>	<p><i>It is suggested that appropriate provisions be made in the Act whereby the tax liability of an individual whose taxable income consists of only long term or short term capital gain, should not in any case, exceed the amount of tax liability calculated deeming the capital gain as regular income. This can be done by making the provisions of Section 111A & 112 optional.</i></p>
112.	Sec.115- Inter Corporate Dividend Distribution Tax (DDT)	<p>The Finance Act, 2008 amended the provisions of section 115-O to eliminate the hardship of double taxation arising on account of cascading effect of DDT in case of inter-corporate dividend. This is a step in right direction. However, the same mitigates the hardship partially. The real objective should be to eliminate the cascading effect of DDT in case of inter corporate receipt & distribution of dividend. The amendment made in the section is very restrictive as it confines to receipt and distribution of dividend only at one level. It applies only to dividend</p>	<p><i>For the reasons given, it is suggested that the system of tax credit for the dividend distribution tax paid by the subsidiary companies against the dividend distribution tax payable by the respective holding companies at all levels be introduced.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>received by holding company from its subsidiary and that too it applies to only one level. In view of this, the double taxation of DDT continues in all other situations of inter-corporate receipt and distribution of dividends. For commercial and other legitimate business needs, inter-corporate shareholding is almost unavoidable.</p> <p>Therefore, amendment in section 115O is required to eliminate the double taxation arising on account of cascading effect of DDT in all such cases. Alternatively, the amendment should not be confined to one level of Holding - Subsidiary relationship. The same should cover all the levels.</p> <p>It may be noted that in view of the business requirements, which necessitate the formation of subsidiaries, the domestic tax system needs to be tuned in alignment with business requirements. In fact, this problem was recognized in the Income-tax Act itself in old Section 80M which provided mechanism to avoid double taxation in such cases.</p>	
113.	Section 115A- Rate of TDS on income by way of royalty or Fees for technical services	The Finance Bill, 2013 amended section 115A and substituted new sub-clauses (A) and (B) in clause (b) for sub-clauses (A), (AA), (B) and (BB), to increase rate of tax from 10% to 25% on payments made to non-residents towards income in the nature of Royalty and Fees for Technical Services ('FTS').	<i>It is recommended that the erstwhile tax rate of 10% on payments made to non-residents towards income in the nature of Royalty and Fees for Technical Services ('FTS') be retained as the same will also be in line with the rate which is provided in majority of the tax treaties.</i>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>															
		<p>The above proposed unreasonable increase in rate of tax merits reconsideration for the reasons stated under:</p> <p>The Hon'ble Finance Minister in his budget speech had stated that the rate of tax on royalty in the Income Tax Act is lower than the rates provided in a number of Double Tax Avoidance Agreements ('DTAAs') and the above proposal is aimed at correcting this anomaly.</p> <p>In this regard, it may be noted that India has entered into DTAAs with almost 84 countries and an analysis of the rate of tax on royalty/FTS in all these DTAAs are as below:</p> <table border="1"><thead><tr><th><i>Sr. No.</i></th><th><i>Countries</i></th><th><i>Rate of tax</i></th></tr></thead><tbody><tr><td>1</td><td>49</td><td>10%</td></tr><tr><td>2.</td><td>16</td><td>15%</td></tr><tr><td>3</td><td>5</td><td>20%</td></tr><tr><td>4.</td><td>2</td><td>22.5%</td></tr></tbody></table> <p>From the above table, it can be observed that in almost 60% of the countries with which India has a DTAA, the rate of tax on royalty/FTS is 10%. There are just 2 countries where the rate of tax is higher than 20%. It should also be noted that trade dealings with these countries is also very miniscule as compared to major trading partners where the rate of tax is 10% under the respective DTAA.</p> <p>Therefore, increase of rate of taxation of Royalty/FTS on the</p>	<i>Sr. No.</i>	<i>Countries</i>	<i>Rate of tax</i>	1	49	10%	2.	16	15%	3	5	20%	4.	2	22.5%	
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Sr. No	Section	Issue/Justification	Suggestion
		premise of aligning the same with the rates under the DTAAs is not justifiable.	
114.	Anonymous donations under section 115BBC	<p>Section 115BBC taxes anonymous donations at a flat rate of 30%. The Finance (No.2) Act, 2009 had introduced an exemption limit for taxation of anonymous donations received by charitable trusts and institutions. Accordingly, the total tax payable by such trusts/institutions would be:</p> <p>(i) Tax @30% on anonymous donations exceeding the exemption limit as calculated above; and</p> <p>(ii) Tax on the balance income i.e. total income as reduced by the aggregate of anonymous donations received.</p> <p>The exemption would be the higher of the following:</p> <p>(i) 5% of total donations received by the trust/institution or</p> <p>(ii) Rs.1,00,000</p> <p>Thus, a clarification is required as to whether the intention of the statute is to altogether exempt this amount from income-tax or to bring it to tax at normal rates of income-tax.</p> <p>The issue is explained by way of an illustration:</p> <p><i>Total donation</i> = Rs.10 lacs <i>Anonymous donations</i> = Rs.3 lacs <i>Exemption under section 115BBC</i> = Rs.1 lac (i.e. higher of Rs.1 lakh</p>	<p><i>To clarify the intention of the statute, it is suggested that section 115BBC(1)(ii) may be re-worded as follows:-</i></p> <p><i>“ the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate amount of anonymous donations received WHICH ARE SUBJECT TO TAX IN CLAUSE (i) ABOVE.”</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>or 5% of 10 Lakhs i.e. Rs. 0.50 lakhs)</p> <p><i>Balance anonymous donations</i> = Rs.3 lakhs – Rs.1 lakhs= Rs.2 lacs is taxable@ 30% under section 115BBC.</p> <p><i>Balance taxable income</i> = Rs.10 lac – Rs.3 lac = Rs.7 lacs would be subject to normal rates of tax.</p> <p>The balance income of Rs.7 lakhs would be exempt only if it is applied for specified charitable purposes.</p> <p>The language of the section, as it reads at present, exempts Rs.1 lakh unconditionally i.e. no application is required for the purposes of total exemption from tax.</p> <p>It is felt that this may not reflect the correct intention of the legislature. The amount of Rs.1 Lakh, exempt under section 115BBC, should also be required to be applied for specified purposes for claim of total exemption from tax.</p>	





CHAPTER XII-B

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
115.	Tax Credit u/s 115JAA & 115JD read with section 115JB & 115JC	<p>Minimum Alternate tax and Alternate Minimum tax is paid u/s 115JB & 115JC of the Act respectively. The amount of tax credit so determined under section 115JAA and 115JD is carried forward and set off in accordance with the provisions of these sections but such carry forward is not allowed beyond 10th assessment year immediately succeeding the assessment year for which tax credit becomes available.</p> <p>In case of an assessee who is entitled to claim the exemption u/s 10A to 10C and deduction u/s 80IA to 80ID, the said amount of tax credit is eligible for set off only after the expiry of the 10th Assessment year in which such exemption and deduction allowed accordingly. However, in effect the purpose of making available the tax credit gets defeated, as tax credit is not utilized by those companies up to 10 assessment years and carry forward of the Income tax paid on book profit under this section, is not allowed to be set off beyond 10th assessment year immediately succeeding the assessment year for which tax credit become available</p>	<p><i>It is suggested that for setting off of MAT credit, a fresh period of 10 years be allowed after the completion of period of exemption in section 10A to 10C and deduction in section 80IA to 80ID under normal provisions of the Act provided it is the exclusive business of the assessee.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
116.	Book Profit tax (MAT) on Scientific Research	Presently, while computing the 'Book Profit' under Section 115JB, the amount of weighted deduction u/s 35(2AB) is not deducted. In	<p><i>In order to promote in-house R&D in India, the amount of weighted deduction u/s 35(2AB) may be allowed to be deducted</i></p>



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Sr. No	Section	Issue/Justification	Suggestion
	Expenditure	the past, similar adjustment in respect of export profits under Section 80HHC was permitted for purposes of computation of 'Book Profit' under Section 115JB.	<i>while computing tax under 115JB.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
117.	Section 115JB- Minimum Alternate tax	a) Disallowance of provision for diminution in value of any asset for computation of "book profit", it appears, is to be made in every class of company. However, in case of banking companies the Government may give a relook and consider applicability of the disallowance provision to a banking company. This is because of the fact that in computation of business income under normal provision, deduction in respect of provision for bad debts is allowed under express provision contained in section 36(1)(viiia) subject to the limit specified in the said section. If provision for bad debts is allowed as deduction in computation of business income under normal provision, there does not appear to be any cogent reason for disallowing the same in computation of "book profit" under section 115JB. Similarly, any special reserve created in accordance with the provisions of section 36(1)(viii) also does not require any disallowance in computation of book profit under section 115JB.	<i>Clause (i) of Explanation 1 to section 115JB may be amended as follows-</i> <i>"(b) the amounts carried to any reserves, by whatever name called [other than a reserve specified under section 33AC and a reserve created and allowed in accordance with the provisions of section 36(1)(viii)]</i> <i>(i) the amount or amounts set aside as provision for diminution in the value of any asset (other than provision for bad and doubtful debts allowed as a deduction u/s 36(1)(viiia))"</i> (SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)
		b) The Government had notified revised Schedule VI (which is same as Schedule III of	<i>Clauses (b) and (e) of Explanation 1 may be deleted with effect from 1st April, 2012.</i>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>in the Companies Act, 2013) providing new formats for presentation of Balance Sheet and Profit & Loss A/c. The changes in Revised Schedule which may be of relevance to MAT are omission of Part III, moving of 'below the line adjustments' to Balance Sheet and changes in certain disclosure items.</p> <p>The Finance Act, 2012 has omitted reference to Part III of Schedule VI since Revised Schedule VI does not contain Part III. However, other consequential amendments are also necessary consequent to notification of Revised Schedule VI, which were not addressed in the Finance Act, 2012.</p> <p>As per Revised Schedule VI (and also Schedule III of the Companies Act, 2013), the profit and loss account prepared as per Part II does not include appropriation to reserves and proposed dividend. These appropriations have to be disclosed by way of Notes to Accounts forming part of the Balance Sheet.</p> <p>Explanation 1 to section 115JB provides that the book profit means the net profit as shown in the profit and loss account for the relevant previous year, as increased by the amounts referred to in clauses (a) to (i) thereunder, if the same is debited to profit and loss account.</p> <p>Since as per Revised Schedule VI</p>	<p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		(as also Schedule III of the Companies Act, 2013), the profit and loss account prepared as per Part II does not include appropriation to reserves and proposed dividend, Clause (b) of Explanation 1 providing for adding back of amount carried to any reserves, by whatever name called, and Clause (e) of Explanation 1 providing for adding back of the amount or amounts of dividends paid or proposed may be deleted with effect from 1st April, 2012 i.e. Assessment Year 2012-13, being the date of applicability of Revised Schedule VI.	



CHAPTER XII-F

SPECIAL PROVISIONS RELATING TO TAX ON INCOME RECEIVED FROM VENTURE CAPITAL COMPANIES AND VENTURE CAPITAL FUNDS





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
118.	<i>Due date of furnishing statement in Form No.64 under section 115U read with Rule 12C</i>	<p>Section 115U(2) read with Rule 12C requires that the person responsible for crediting or making payment of the income on behalf of a Venture Capital Company (VCC) or a Venture Capital Fund (VCF) and the VCC/VCF shall furnish a statement in Form No. 64 to the person liable to tax in respect of such income by 30th November of the financial year following the previous year during which such income is distributed.</p> <p>Difficulty is faced by assesseees who have to file their return of income by 31st July of the assessment year. Since income received by the investor is taxable in his hands, he has to declare his income in his return of income. However, the certificate is received by them by 30th November, which causes genuine difficulty to him.</p>	<p><i>To enable the investor of VCC/VCF being an individual, to declare his income from VCC/VCF in his return of income by 31st July, the due date of furnishing statement under Rule 12C should be changed to "30th June" from "30th November".</i></p>





CHAPTER XIII

INCOME TAX AUTHORITIES





PART C-POWERS DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
119.	Section 132- Search and seizure	<p>a) After search, as per amended provision by the Finance Act 2010, where assessee files application with Settlement Commission for settlement of his cases, the cash seized during search be permitted to be adjusted against the tax due as per the offer made by the assessee in the settlement application. It may be mentioned that as per the provision contained in this regard, the assessee has to make additional disclosure of income in the settlement petition and pay additional tax of Rs.50 Lakhs before filing the application with the Settlement Commission.</p>	<p><i>Since cash is seized at the time of search and lying in PD account of CIT, such cash after adjusting existing tax liabilities, may be permitted to be adjusted against the tax due as per settlement petition. Suitable amendment / instruction is required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>
		<p>b) Under the existing provisions, the applicant is allowed the benefit of filing application before the Settlement Commission subject to the limit of additional tax of Rs. 50 lakhs whereas the said benefit is available to specified person if the additional tax exceeds Rs. 10 lakhs. Therefore, a person whose case is connected with the main searched party but is not covered in the meaning of specified person cannot file application before the Settlement Commission unless the additional tax exceeds Rs. 50 lakhs.</p> <p>It is significant to note that the</p>	<p><i>In view of above, it is suggested that the limit of additional tax of Rs. 50 lakhs be removed and the provisions of section 245C appropriate amended be made in respect of persons who are covered under search along with the main searched party but are not the main applicant under clause (i) of Proviso to Section 245C of the Income-tax Act, 1961 in Chapter XIX-A, Settlement of Cases.</i></p>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		actions are initiated u/s 153A or 153C of the Act in consequence to search conducted on the applicant. The condition imposed of Rs. 50 lakhs of additional tax for filing the application in case of non-specified person is unreasonable as the proceedings in the case of non-specified person are merely as a result of search in case of the main applicant. It is important to note that the Settlement Commission will assess the correct income in any case and therefore imposing the limit of Rs. 50 lakhs is very harsh for the cases which are searched together and centralized also by the Income Tax Department.	
		<p>c) Section 132B provides for application of seized or requisitioned asset. The first proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which it was seized for the release of asset and the AO is satisfied about the explanation provided regarding the source of asset, the asset is released after recovery of the amount of any existing liability.</p> <p>Further, second proviso to section 132B(1)(i) provides that such asset or a portion thereof shall be released within a period of 120 days from the date on which last of the authorizations for search under section 132 or for</p>	<p><i>In view of the practical difficulty being faced, it is suggested that a provision like 132(5) [omitted by Finance Act, 2002] which provided for provisional assessment be introduced and the asset be released after releasing the amount due as per provisional assessment.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		requisition under section 132A as the case may be, was executed. Even after release of Instruction No. 11/2006, dated 1-12-2006 practical difficulty is being faced by assesseees as the asset is not released upto the completion of assessment.	





CHAPTER XIV-
PROCEDURE FOR ASSESSMENT





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
120.	(a) Due date of filing of return in section 139(1) for partners other than working partners	<p>As per the Explanation 2 to section 139(1), due date for filing return of income is 30th September of the AY in respect of a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force. While partners, other than working partners, are required to file return of income by 31st July of the AY. It has been observed that difficulties are being faced by partners other than working partners as their Income-tax return form requires them to mention the capital balance. It is imperative to note that it becomes quite difficult for the partner other than working partner to mention such capital balance on 31st March in the firm (liable to get its accounts audited and file its return by 30th September) in his return, until the audit of such firm is completed. Thus, it is suggested that said difficulty may be resolved.</p> <p>It may also be noted that Finance Act, 2005 brought the firms at par with companies by amending section 139(1)(a) making it mandatory for all firms to file their return of income before the due date. Since both of them are mandatorily required to file return of income irrespective of the quantum of income, the due dates of filing return of income for both should also be at par.</p>	<p><i>In order to resolve the difficulty being faced by partners other than working partners, it is suggested that wherever the firm is liable to get its accounts audited, the due date for filing return of income under section 139(1) of the Income-tax Act, 1961, may be extended to 30th September of the AY for all partners of the firm including non-working partners of the firm.</i></p> <p><i>Also, like Companies, all firms are mandatorily required to file return of income, thus the due date of filing return of income for all such firms should be in line with the companies irrespective of whether or not the accounts are required to be audited.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
	(b) Section 139- Enlarging the scope	The scope of filing return of income should be widened.	<p><i>The scope of filing return of income should be widened so as to include in its ambit the persons entering into the following transactions:</i></p> <ul style="list-style-type: none">➤ <i>A person having foreign tour twice in a block of three years or thrice in a block of five years should file his/her return of income mandatorily.</i>➤ <i>A person having huge agriculture income or is in a possession of large agriculture land should also come within a purview of return of income.</i>➤ <i>A person paying electricity expense above certain limit (say Rs. 36000 pa)</i>➤ <i>A person paying school fees above specified limit (say Rs. 72000 pa) should also come under the scope of return of income.</i>➤ <i>If the aggregate amount deposited in the current account exceed certain limit (say Rs. 30,00,000) then provisions of filing of return should apply to that person mandatorily.</i>➤ <i>The person has AIR transaction should also come under the scope of return of income, and if he/she not file return of income then penalty u/s 271F should be levied instead of giving notice for filing return of income.</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
			<p>➤ <i>Cash withdrawals from saving bank account above certain limits should also take place in the annual information return.</i></p> <p><i>(SUGGESTION TO WIDEN THE TAX BASE)</i></p>
121.	Revised return - Section 139(5)	a) Section 139(5) provides for filing of revised return in cases where return has been furnished under section 139(1) or in pursuance of notice under section 142. There is no provision of filing revised return in case where return is filed belatedly under section 139(4).	<p><i>It is suggested that section 139(5) may be amended to provide that the revised return can be filed even in the case of belated return.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
122.	Guidelines for the empanelment of auditors under section 142(2A)	For the purpose of conducting special audit under section 142(2A) of Income-tax Act, 1961 (corresponding clause 151 of the Direct Taxes Code Bill, 2010), the auditor is nominated by Chief Commissioner or Commissioner. Presently, no specific guidelines have been issued by the authorities to enable the Chief Commissioners or Commissioners to take an informed decision. Considering the fact, that the tasks involves auditing of complex accounts, some specific guidelines taking into account the experience of the auditor in the relevant field etc may be issued by CBDT. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits in a particular year may be imposed.	<p><i>Specific guidelines for the appointment of auditor under section 142(2A) by Chief Commissioner or Commissioner may be issued. The said guidelines may provide for conditions like experience of the auditor in the relevant field, number of years of experience, number of partners etc. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits by a particular auditor in a particular year may be imposed.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
123.	Special audit - section 142(2A)	<p>Section 142(2A) was amended by Finance Act, 2013 apparently to amplify the scope of special audit i.e. the Assessing Officer now has the power to direct a special audit, having regard to volume of transactions, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee. So far, the "nature and complexity of the accounts" was the necessary and sufficient criterion for directing special audit.</p> <p>The new section 142(2A) appears to have the effect of enlarging the scope of special audit considerably. The scope of reasons for invoking the powers under section 142(2A) to direct the assessee to get the accounts audited by an accountant have been substantially increased.</p> <p>Empowering the Assessing Officer to invoke tax audit under section 142(2A) merely due to the "volume of accounts" or "multiplicity of transactions" may have the effect of bringing each and every case within the ambit of special audit. Each and every gas station, share broker, retailer, agency business and the like may fall within the purview of this section solely on account of the "volume of accounts" or "multiplicity of transactions". Also, as these expressions are highly subjective, they are prone to adoption of very low threshold</p>	<p><i>It is suggested that no change is required in the existing section, since it adequately takes care of all cases of complexities, including doubts about the correctness of accounts and multiplicity of transactions.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>to trigger the application of this provision. This may cause undue hardship to even those assesseees who genuinely ensure compliance with the provisions of law. Further, the specialized nature of business activity of the assessee, like say electricity or insurance business, in our opinion, cannot be a standalone reason for directing special audit.</p> <p>Special audit, as the name suggests, should be invoked only in exceptional circumstances, which is the reason why the existing section aptly confines that it is the nature and complexity of accounts which has to be considered while directing such audit. There should be a distinction between regular audit and special audit. The scope of special audit cannot be increased to such an extent that majority of the assesseees, whose accounts have already been audited, are once again subject to a special audit merely due to, say, volume of accounts being more in case of large enterprises. The special audit is more in the nature of investigation or due diligence, and therefore, needs to be directed only in exceptional cases having regard to the nature and complexity of accounts.</p> <p>Further, this may increase the possibility of some Assessing Officers resorting to special audit since it gives them an extended time for completing their assessment.</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
124.	Hardship arising out of the Apex Court's decision in <i>Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)</i>	<p>a) In the above-mentioned case the assessee filed its return of income for the relevant assessment year without claiming a particular deduction. Later on, it sought to claim the deduction by way of a letter addressed to the Assessing Officer. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make amendment in the return of income by making an application at the assessment stage without revising the return.</p> <p>The assessee had relied upon the decision of the Apex Court in <i>National Thermal Power Company Ltd. v. CIT (1998) 229 ITR 383</i>, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal. In that case, it was held that the Tribunal had jurisdiction to examine a question of law (raised for the first time), which arose from the facts as found by the income-tax authorities and which have a bearing on the tax liability of the assessee.</p> <p>The Supreme Court held that this decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. Therefore, the assessee can claim deduction only by filing a revised return.</p> <p>The above-mentioned decision of the Apex Court has unsettled</p>	<p><i>Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings under section 143(1) and section 144 by methods otherwise than by way of filing a revised return.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		many a case law and has caused unintended hardship to the assesseees	
		<p>b) No deduction is permitted to an assessee under section 10AA and Part C of Chapter VIA if the assessee fails to make a claim in the return of income. This provision is very harsh and disentitles the assessee to legitimately claim otherwise legally allowable deductions due to technical reasons. In many cases, failure to make claim in return may be inadvertent and mere omission. There are wide powers given to the Income tax Authorities under the Income-tax Act to reopen / review / rectify assessment if any error prejudicial to the interest of the Revenue is found.</p> <p>Also in the case of Goetze (India) Limited Vs CIT (284 ITR 323) the Apex Court has held that it is necessary for an assessee to revise its return of income for raising any new claim which is not raised in the original return of income.</p>	<p><i>Provisions of section 80A(5) should be modified to permit filing of new claim by the assessee in the course of assessment, even without filing of revised return of income. This will remove unintended hardship.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>
125.	Mistake apparent from record	Even after due efforts taken by the Government to ensure compliance relating to filing of TDS returns by the deductors, the defaults on behalf of deductors continue for one or the other reason. This deprives the deductee from claiming the Tax so deducted in his return of income filed before due date of filing return. However, situations	<p><i>The Assessing Officers may be given appropriate instructions to accept rectification applications under section 154 in cases where Form No. 26AS reflects the entries relating to TDS but the same has not been claimed in the return of income.</i></p> <p><i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>do arise where the returns are belatedly filed or a correction statement has been filed at a later date by the deductor resulting into a credit in Form No. 26AS of the deductee at a later date say after the time limit of filing a revised return has also expired.</p> <p>Considering the fact that such an omission in the return of income, duly supported by the entries of Form No. 26AS, is a mistake apparent from record, it is suggested that the Assessing Officers may be intimated to accept the rectification application under section 154 in such cases. This will surely be helpful in removing the administrative hindrances being faced by the assesseees as well as the Government.</p>	<p><i>DIFFICULTIES RELATING TO DIRECT TAXES)</i></p>
126.	<p>Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Sec 155(14) has elapsed) demanded by the Government authorities at a later date:</p>	<p>Many government/semi-government authorities (viz. Mining Department) have been demanding TCS of earlier years for which assessments have already been completed, since they had not collected the TCS in the those relevant years. After making payments of TCS the certificates for the same are issued in current year giving reference of expenditure incurred by payer for earlier financial years.</p> <p>As per the provision of section 155(14) "the credit of TDS/TCS certificates is available to assessee within 2 years from the end of the assessment year in which such income is</p>	<p><i>It is suggested that considering the hardship being faced by assesseees in respect of cases mentioned above, the department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>assessable” but since the payment & certificates are received after the above mentioned period, it is difficult to get the credit for the same. The demand at such later date itself is causing undue hardship to the assessee and further the credit for the same is not available to the assessee because the assessments have already been completed. Hence, department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.</p>	





CHAPTER-XVII-
COLLECTION AND RECOVERY OF TAX





PART B- DEDUCTION AT SOURCE

DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
127.	<i>Different Methods of accounting followed by the deductor and deductee</i>	<p>One of the important reasons for mismatch of TDS claimed and TDS as per Form 26AS is adoption of different method of accounting (i. e. Cash or Mercantile) by the deductor and deductee. Various situations that may arise have been explained below by means of examples:</p> <p>i) Deductor– Mercantile system of accounting Deductee–Cash system of accounting</p> <p>If the deductor follows mercantile system of accounting, the tax would be deducted at source and deposited in the year in which provision is made. Whereas the deductee following the cash basis of accounting, would offer the income and claim TDS in the year in which the amount is actually received by him. For example audit fees paid to a Chartered accountant's firm by a company. In such a case it is difficult for the deductee to claim TDS as the TDS certificate is issued in respect of the year other than the year in which it is claimed.</p> <p>Also in some cases, the receipts may be spread over in two or more years. In such cases, there is difficulty in getting credit of TDS</p>	<p><i>TDS should not be linked with the year of income or the year of receipt. Credit for TDS may be given on the basis of the claim made by the assessee irrespective of the assessment year in which income is received or income is offered to tax. There should be a clear differentiation between amount deducted and amount claimed. The TDS not claimed in a particular year due to any reason may either be allowed to be claimed in the any other assessment year or to be refunded to the deductee. The total TDS claimed and the balance, if any, may be reflected in Form 26AS. Form No. 26AS should be made as a bank pass book where the unclaimed credit is allowed to be carried forward for claiming in the next year.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>in second and subsequent year in which amount is actually received, as the physical Original copy of TDS certificate was already filed with the Department at the time of getting the TDS credit in 1st year and on subsequent receipts, the assessee would not be able to produce the Original TDS certificate.</p> <p>(ii) Deductor- Cash system of accounting Deductee - Mercantile system of accounting</p> <p>There is a provision to take the credit of TDS in the year in which income is assessable to tax. If for any reason, TDS certificate has not been furnished; such certificate can be produced within two years u/s 155 of the Income-tax Act. But issue generally arises when the following situation occurs:</p> <p>In case of a deductee who maintains books of accounts on mercantile basis. The amount due to him in respect of a government contract is accounted for in his books of accounts in a particular year and advance tax/ self assessment tax is paid by him in respect of that income. However, the government which maintains books of account on payment basis pays the amount after two years after deducting tax at source. In such a case, the assessee would neither be entitled to claim credit of TDS in the year of receipt as the income</p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		has already been offered to tax in an earlier year nor he would be able to get refund of tax paid by him as the time to file revised return may also have expired. This amounts to payment of tax twice to the government.	
128.	<i>Need to strengthen the validation system of FORM 26AS:</i>	<p>Form 26AS contains:</p> <ul style="list-style-type: none">a) Details of tax deducted on behalf of the taxpayer by deductors.b) Details of tax collected on behalf of the taxpayer by collectorsc) Advance tax/self assessment tax/regular assessment tax, etc. deposited by the taxpayers (PAN holders)d) Details of paid refund received during the financial yeare) Details of the High value Transactions in respect of shares, mutual fund etc. <p>The Tax Credit Statement (Form 26AS) is generated wherein valid PAN has been reported in the TDS statements. Assessee can view the details of TDS/TCS/Advance Tax/ Self Assessment tax etc. in Form 26AS from Income Tax website. Form 26AS is of great convenience to the assessee as he can view all the above mentioned details at one place.</p> <p>But at the same time, there are number of hidden hurdles that are being faced by both- the assessee and Income Tax department on account of mis-match of</p>	<p><i>In view of above, it is suggested that the details of TDS/TCS/Advance Tax/Refund etc should be feeded by both PAN and Name or PAN and Date of Birth (DOB) or PAN and Date of Incorporation (DOI) as well, of the deductee and the same should be validated.</i></p> <p><i>On validation, if there is any mis-match in combination of PAN and Name/DOB/DOI of the deductee then an immediate alert browser with beep showing the error should appear on the feeder's screen. Further, it should be re checked that the correct amount is being uploaded in correct account & to the correct assessee & the same is correctly reflected in Form 26AS.</i></p> <p><i>Proper validation system should be adopted while uploading data regarding Form 26AS so as to curb the problem of mis-match of actual data and the data reflecting in FORM 26AS. This suggestion will reduce the number of rectification applications u/s 154 of Income Tax Act, 1961 and also strengthen the trust & faith among the assessee that the details reflecting in FORM</i></p>



The Institute of Chartered Accountants of India

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		<p>amount/details as per FORM 26AS and the actual amount/details of TDS/TCS/Advance Tax/Self Assessment Tax and investment exceeding Rs. 2,00,000 made by the assessee in securities during the relevant assessment year.</p> <p>Due to mis-match of tax details, the Income Tax department is issuing letters/notices to the assessee regarding details of TDS/TCS etc. resulting harassment and unwanted mental tension to the assessee.</p>	<p><i>26AS are correct</i></p> <p><i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i></p>
129.	Applicability of TDS on genuine provisions on estimate basis without bills:	<p>Currently tax is deductible even in cases where payment is not made and the amount is credited in the books of the assessee as provision for expenses or as suspense account or by any other name. Very often, such provisions or credits are made by the assessee to follow accrual system of accounting so that true and fair state of affairs the business is reflected in the books and to ensure that all revenues and expenses are appropriately matched. This does not necessarily mean liability has crystallized or the amount has become due. Very often exact numbers are not available and the provisions / credits are made based on best estimates available with the assessee. As per the current position, the assessee is required to deduct tax on such provisions even before the bill/invoice has been received. This often leads to excess</p>	<p><i>It is suggested that the provision of TDS should not be made applicable on entries made by assessee, which are merely provision for expenses for work completed/ services rendered but for which bills have not been received. TDS may be imposed only on such credit entries to the party accounts which are supported by bills / invoices.</i></p> <p><i>Alternatively,</i></p> <p><i>It is suggested that the deductor should be allowed to issue separate Form No. 16A for Provision made for expenses.</i></p> <p><i>Alternatively,</i></p> <p><i>As suggested earlier , a system on the lines of bank pass book be introduced in the Form No. 26AS, wherein the credit not taken in a particular year is carried forward to next year for claiming against the tax payable of next year.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>deduction of tax, disputes with the vendor and extensive reconciliation. Further, this causes great amount of confusion between the assessee and the vendor if the provisioning by the assessee and invoicing by the vendor fall in two different financial years.</p> <p>The CBDT has through Circular No.-01/2012 dt-09.04.2012, made it mandatory for all deductors to issue TDS certificate in Form No. 16A generated and downloaded from TIN website for deduction of tax at source made on or after 01.04.2012. Since it has to be downloaded from the TIN website, all the data for entire quarter gets generated in a single certificate based upon TDS return filed by the assessee. Prior to this circular, most of the deductee, who were following cash system of accounting, used to get separate Form 16A from the deductor for Provision made for expenses and accordingly, they were getting TDS credit easily (that means, in the last quarter the deductee were getting two Form 16A, one for payment made and the other for provision). The problem arises when the deductor is following accrual method of accounting and the deductee is following cash method of accounting. In the last quarter, the deductor would deduct tax at source on Provision made for expenses and it would get reflected in Form 16A of the</p>	<p><i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		deductee. Now the deductor cannot issue separate Form 16A for provision made for expenses which he could issue earlier. Accordingly, it would create lot of hardship for deductees to claim the TDS credit of the same in the year when they receive the said amount.	
130.	<i>Synchronization of Section 192 & Section 15 of Income Tax Act</i>	Section 192 relating to TDS on salary to be synchronized with the provisions of the charging section 15 of the Income-tax Act, 1961.	<i>Section 192 relating to TDS on salary to be synchronized with chargeable section 15 so that TDS can be deducted at the time of accrual or received whichever is earlier or alternatively section 15 can be amended to tax salary income at the time of receipt only.</i>
131.	TDS under Section 194A-Interest payments to NBFC	Section 194A(3)(iii)(a) provides that the tax on interest other than interest on securities is NOT required to be deducted by a person responsible for paying the same to a resident, if the income is credited or paid to any banking company to which Banking Regulation Act, 1949 applies or any co-operative society engaged in the business of banking (including a co-operative land mortgage bank). It may be noted that Section 194A does not treat Non- Banking Financial Institutions (NBFCs) at par with the Banking companies or Co-operative Banks. Due to this, the middle class businessmen who have borrowed money from NBFC's are disallowed interest paid on the	a) <i>To provide relief to the genuine taxpayers paying interest to NBFC's, it is suggested that the section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies.</i> b) <i>Further, in order to ensure compliance of the provisions of the Act for timely collection of taxes provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.</i> <i>(SUGGESTION TO IMPROVE TAX COLLECTION)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>same due to non-deduction of tax at source under section 194A of the Income-tax Act, 1961. It is suggested that section 194A should not apply to NBFCs as:</p> <p>(a) NBFCs principal business is of lending money under various products just like Banking Company or a co-operative Bank.</p> <p>(b) There is no mechanism for deduction of tax on interest paid by the assesseees as the NBFCs collect cheques of EMI for the tenure of loan.</p> <p>(c) NBFCs are also regulated by RBI just like Banking Company and a Co-operative Bank.</p> <p>Considering the fact that there is no mechanism for deduction of tax on interest paid by the assesseees as the NBFCs collect cheques of EMI for the tenure of loan, the non-compliance of the provisions of this section is inevitable. The said provision creates problem for the assessee who has borrowed money as he is unable to claim deduction in respect of said interest due to operation of section 194(a)(i).</p>	
132.	<i>Payment of hire purchase installments under an hire purchase agreement- applicability of tax deduction u/s 194A or 194I</i>	<p>Under the existing tax deduction provisions, it has not been specifically provided whether payment of hire purchase installments would attract tax deduction. The hire purchase installments comprise of principal & hire finance charge element.</p>	<p><i>Specific amendment shall be made to exclude requirement of deduction of tax in the finance charge u/s 194A or 194I.</i></p>



The Institute of Chartered Accountants of India

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133.	<i>Section 194C-Defination of the term "work"</i>	<p>As per the existing provisions of the Act, the 'work' for the purpose of deduction of tax at source on payment to contractors has been defined to include "manufacturing or supplying a product according to the requirement or specification of customer by using material purchased from such customer". The above provision has resulted in deduction of tax by companies wherein even a small component is supplied on free of cost basis or otherwise to the supplier and supplier in turn supplies the final product along with the component supplied to the customer.</p>	<p><i>In order to will avoid genuine and avoidable hardship to assessee for claiming refund of TDS, it is suggested that the definition of "work" under section 194C in the above clause should be modified as "manufacturing or supplying a product according to the requirement or specification of a customer by using <u>all/ significant</u> material purchased from that customer"</i></p>
134.	<i>Section 194H- Deduction of tax at source from income in the nature of commission or brokerage:</i>	<p>In telecom industry, margins earned by the distributors on sale of recharge vouchers are very low and the distributors sustain only on account of volumes. Deduction of tax at source @ 10% u/s 194H leads to hardship, compliance burden and huge costs.</p>	<p><i>It is suggested that the distributors of recharge vouchers should exempted from compliance requirement u/s 194H provided (a) TDS is deducted on gross margin at the first level; and (b) Annual Information Return is filed by the person taking benefit of such an exemption.</i></p> <p><i>Further, the rate of TDS u/s 194H should be reduced to 1%.</i></p>
135.	<i>Clarification regarding TDS on Commission to a partner under section 194H read with section 40(b)</i>	<p>In case of partnership firms Section 40(b)(i), provides that "remuneration" shall mean any payment of salary, bonus, commission or remuneration by whatever name called. Considering a partner and partnership firm as one entity, the provisions of tax deduction at source under section 192 have not been made applicable on</p>	<p><i>On the lines of the provisions of section 194A, section 194H be amended to provide that Commission paid by the Partnership firm to its partners would not be liable to Tax deducted at source under section 194H.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>payment of such remuneration, as the same is not taxable under the head "Salaries". Also, the provisions of TDS under section 194A are not applicable to interest (other than interest on securities) credited or paid by a firm to a partner of the firm.</p> <p>Section 194H provides for tax deduction at source in respect of commission or brokerage. On the lines of section 192 and 194A, there is a need to clarify that Commission paid by the Partnership firm to its partners would not be liable to Tax deducted at source under section 194H.</p>	
136.	Section 194I- TDS on rental income	<p>As per the provisions of section 194I the tax is to be deducted at source @10% in respect of income by the way of rent for any use of land or building or furniture or fixture etc. The proviso to section 194I further provides that no tax be deducted in case the total rent paid in a financial year does not exceed Rs.1,80,000/-. Considering the general basic exemption limit of Rs.2,00,000/- for the Assessment year 2013-14 and for Senior Citizens of Rs.2,50,000/- the present limit of Rs.1,80,000/- seems to be too low, especially for those Senior Citizens whose source of income is only rent. Hence, the limit of Rs. 1,80,000/- under section 194I may be increased appropriately.</p> <p>Further, the provisions of section 197A should be made applicable only to those assesseees who do</p>	<p><i>Considering the increase in the basic exemption limit for general assesseees and senior citizens, it is suggested that the exemption limit of Rs. 1,80,000 in respect of TDS on rent under section 194I be enhanced appropriately.</i></p> <p><i>Further, the provisions of section 197A should be made applicable only to those assesseees who do not own more than one house property and whose total income does not exceed the maximum amount not chargeable to tax.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		not own more than one house property and whose total income does not exceed the maximum amount not chargeable to tax. This will prevent misuse of the provisions of section 197A and section 194I.	
137.	Section 194-IA-TDS on transfer of immovable property	<p>Tax is to be deducted@1% on consideration for transfer of immovable property, other than agricultural land. However, no tax is to be deducted if the consideration for transfer of immovable property is less than Rs. 50 lakhs.</p> <p>The issues emerging from this section are as under:</p> <p>a) In a large number of cases, loan is taken by the transferee from a bank or financial institution, employer etc. for purchase of immovable property. In such cases, the payment is not made directly by the transferee to the transferor, except for the down payment. The major part of the consideration is paid by the bank, financial institution etc. to the transferor, either in instalments or lump sum.</p>	<p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p> <p><i>Section 194I may be appropriately modified to require the transferee or the payee, as the case may be, to deduct tax at source from the consideration paid or credited to the transferor.</i></p>
		<p>b) Further, the provisions for tax deduction are causing hardship to those sellers who claim full capital gains exemption by investing the capital gains or the net consideration, as the case may be, in the manner provided in section 54, 54F, 54EC etc., since in such cases, there would be no tax liability</p>	<p><i>It is suggested that section 197 may be amended to permit the assessee to make an application to the Assessing Officer for issuing a certificate for no deduction of tax or deduction of tax at a lower rate. In the alternative, the seller may be permitted to give a declaration to the Assessing</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		on account of capital gains. Further, for the purposes of section 54F and 54GB, the entire net consideration is required to be invested, which poses a difficulty, since tax would already have been deducted from the net consideration	<i>Officer and furnish a copy of the same to the buyer</i>
		<p>c) The assessee may face practical hardship in applying the TDS provision, in case where the consideration is in kind (which is common practice in real-estate sector). For e.g., a land-owner transfers development rights to a developer for agreed built-up area in consideration.</p> <p>d) Dual TDS implications on the same transaction in such cases may lead to practical difficulties as in the said case, both the land-owner as well as the developer would be liable for TDS on the same transaction.</p> <p>e) Hardship is also likely to be faced in cases where the property is purchased jointly, as it is not clear whether the threshold limit of Rs. 50 lakhs is to be applied to each owner or to the total consideration for the property.</p> <p>f) If the payment is being made in installments, like in the case of construction linked payments, then the point of time when tax deduction and tax remittance should be made requires clarification. In such cases,</p>	<p><i>a) To ensure effective compliance of the provisions of section 194IA the aforesaid issues may be clarified at the earliest.</i></p> <p><i>b) Also, in order to overcome the difficulties in cases where remittance and taxability arises in different years, a system of pass book be introduced in Form No.26AS wherein the balance of unutilized credit be allowed to be carried forward</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>there may be several installment payments based on the stage of completion. Consequently, if tax is required to be deducted in respect of each payment, whether a single remittance can be made at the stage of tax deduction in respect of the last payment or multiple remittances are required at each stage is an issue which needs to be addressed.</p> <p>g) In case of non-compliance due to non-furnishing of PAN, the provisions of section 206AA would be attracted. At present, credit for tax deducted under section 206AA is not being reflected in Form No. 26AS, even if deductee submits his PAN subsequently. This issue needs to be addressed so that credit of tax deducted and remitted is not denied to genuine assesseees.</p> <p>h) The tax department may face the difficulty of relating different challans to the year of reporting of income by the transferor. For instance, the capital gains may be chargeable to tax in the year of transfer whereas deduction of tax at source may have taken place in a different year.</p>	
138.	Fees for professional or technical services- Section 194J	The amendment to section 194J by the Finance Act, 2012 requires deduction of tax at source @ 10% on any remuneration or fees or commission, by whatever name called, to a director of a company,	a) <i>Section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>other than those on which tax is deductible under section 192</p> <p>However, the independent limit of Rs.30,000 each provided for under section 194J in respect of other payments covered therein, namely, royalty, fee for technical services, fee for professional services and non-compete fees, as a threshold, beyond which TDS @ 10% would be attracted, is not being provided in respect of director's remuneration. This unintended inequity may be removed.</p> <p>Further, corresponding amendment is required in section 40(a)(ia) to provide for disallowance in case of non-deduction or short-deduction of tax at source.</p>	<p><i>deduction at source.</i></p> <p><i>b) Section 40(a)(ia) be amended to include within its scope payment to a director on which tax deductible at source has not been deducted .</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>
139.	Section 194J- Claim of TDS on income declared on cash basis	<p>Under Section 194J of the Income-tax Act, 1961, tax is deductible and payable at the time of credit or payment, whichever is earlier. TDS is one of the modes of recovery of tax. It is well known that most of the professionals follow 'Cash Basis' of accounting. As per the provisions of Section 199 read with Rule 37BA, the credit for TDS is allowable to the deductee in the year in which the corresponding income is offered for taxation. Rule 37BA further provides that if the receipts of the fees are spread over more than one year, the credit for TDS will also be spread over such years in which the income is received and taxed. In view of this, it is absolutely incorrect and against</p>	<p><i>In order to overcome the above situation and the inconsistency, it is suggested that the system on the lines of bank pass book be introduced in the Form No. 26AS, wherein the credit not taken in a particular year is carried forward to next year for claiming against the tax payable of next year.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>the provisions of Section 199 read with Rule 37BA to claim the credit for T.D.S. on the basis of Form No. 26AS. The Departmental Software developed for the processing of ITR does not take care of the provisions of section 199 read with Rule 37BA in case of assessee following Cash Basis of accounting and there is a clear inconsistency. This results in credit for prepaid taxes not being given correctly and fully as per the claim made which are, otherwise, as per the provisions of law.</p>	
140.	Section 194LC- Income by way of interest from Indian Company	<p>The Finance Act, 2012 had inserted section 194LC to provide that the interest income paid by specified company to a non-resident shall be subjected to tax deduction at source at the rate of 5%. Section 115A was also amended to provide that such income will be taxed at the rate of 5%.</p> <p>Section 194LC(2)(ii) provides that for the purpose of deduction of tax at source at the rate of 5%, the interest payable by the specified company to a non-resident, not being a company or a foreign company, shall be the income payable by the specified company TO THE EXTENT TO WHICH SUCH INTEREST DOES NOT EXCEED the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment.</p> <p>It is imperative to note that usage</p>	<p><i>In order to bring out the real intent of the law, it is suggested that the section 194LC(2)(ii) may be reworded to provide that the interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company "IF such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment"</i></p> <p>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>of the term "To the extent to which such interest does not exceed" may be interpreted to mean that in case the borrowings are made at a rate higher than the rate approved by the Central Government, the interest income on the difference will be chargeable to tax at the rate of 20%. As per the explanatory memorandum, this amendment was made in order to augment long-term low cost funds from abroad. It is felt that this is an inadvertent mistake and thus needs to be reworded.</p>	
141.	<i>TDS on interest on NRO account</i>	<p>Presently, Indian residents who earn interest on their Indian bank accounts are liable to pay TDS on amounts over and above Rupees 10,000. However when it comes to NRIs they are not allowed this benefit on their NRO accounts. All interest earned in NRO accounts is subject to a TDS rate of a whopping 30%.</p> <p>In majority cases, the NRE's are not able to file for refunds due to small amount as the cost of filing is more than deduction.</p>	<p><i>Commercial banks may be instructed by proper authority, not to deduct TDS on NRO account interest upto 10,000 per annum.</i></p>
142.	<i>Section 195- Time limit for - Issuance of "general or special order"</i>	<p>Section 195(2) provides where a payer considers that whole of the sum being paid to a non-resident is not chargeable to tax, he may make an application to the Assessing Officer to determine by general or special order, the appropriate portion of the sum so chargeable.</p> <p>It may be noted that no time limit of passing such order has been</p>	<p><i>It is suggested that an appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer. Further, where an application is rejected the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		prescribed in the Act, which causes undue hardship in genuine cases.	(Suggestions for rationalization of the provisions of Direct Tax Laws)
143.	Validity of Certificate issued u/s 197	The Certificate under section 197 is at present issued with a validity date from the date of issue. Though the assessee is applying in the month of April, i.e., at the beginning of the financial year, the certificate is issued much late. The date of issue is taken as the validity date owing to which, the deductors are deducting the tax for the earlier part of income/payments. By any reasonable estimate, an assessee cannot have taxable income for some part of the financial year and exempt income for remaining part of the year.	a) <i>the application may be allowed to be made atleast before 30th June of the financial year i.e. within three months of commencement of the financial year for before planning for advance tax.</i> b) <i>Such application should be disposed off within 30 days.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
144.	Section 200-Furnishing of TDS returns	Section 200 provides for the payment of TDS and filing of TDS Returns. The Income Tax Law requires payment of TDS every month by 7th of the following month and by 30th April of the Assessment year for tax deducted in the month of March of the Previous year. The said payment is to be made under various codes as per the sections under which the tax is deducted. Currently, the payment under each code is to be made under a separate challan which requires filling up the same PAN, TAN, name, address etc details over and over again. This is clubbed with the internet connection problems and it becomes a very cumbersome job especially for the small and	<i>Since the details are already available with the deductor at the time of payment of taxes, the e-challan itself can be so designed that it captures all the details at that time. The details so submitted at that time may respectively be reflected in the Form 26AS of all deductees.</i> (SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>medium assesseees.</p> <p>Practically, for payment of tax so deducted details of parties with PAN and section under which it is to be deducted is maintained. However, except the section under which tax is required to be deducted, no other detail is required to be mentioned in the challan. The statement containing all such details is to be submitted for every quarter. This leads to duplication of work and also a cumbersome task of furnishing so many statements and challans.</p>	
145.	<i>Mismatch on account of punching data</i>	<p>The non-government deductors majorly comprise of non-corporate sector which is not very organized. Approximately less than 6000 assesseees are listed companies who take the help of professionals to file statements of TDS/TCS in time. Approximately, 6,60,000 assesseees are private limited Companies, but majority of them are family organizations or organizations among the friends registered as Private Limited companies under Companies Act. Further, last year there were approximately 18,00,000 tax audit assesseees. This clearly reflects that more than 66% of the assesseees who are liable to deduct TDS are non-corporate entities comprising of Individuals, HUFs, firms etc. In addition to above, certain non corporate and NGOs are also mandatorily liable to deduct TDS.</p> <p>The data entry in the non-corporate sector is majorly done</p>	<p><u><i>In continuation of the above suggestion, the following is suggested:</i></u></p> <p><i>To avoid such data mismatch, it is necessary to have a PAN/TAN master file for each and every deductor. CPC(TDS) may prepare a software freely downloadable for all deductors wherein deductor may fill in the details like name, PAN and the applicable section/s for deduction (it may be one section or more than one). This temporary master file may then be uploaded back. The CPC(TDS) may verify the details so submitted and provide the deductor with error details, if any. The deductor may then rectify the errors and resubmit it. The process goes on unless the Department agrees with the data provided by the deductor. The final data so generated may be stored as a master file for that deductor in the database of</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		by persons who are not even graduates. This has infact lead to the problem of huge mismatch of data of the deductees. There are clerical errors like wrong punching of name details, PAN details, Section under which data is punched and the like.	<p><i>the Department.</i></p> <p><i>The deductor while making payment every month through e-challan will click on the section for which payment is to be made. Once a particular section is clicked, all the parties registered under that section will appear. The deductor may accordingly, fill the details of amount and submit the same along with the payment of taxes. The deductees for which not tax has been deducted may be reflected/prefilled as "0". This will on one hand enable the deductor to save time on rechecking his details at the time of quarterly filing of TDS returns and on the other hand provide monthly credit details in the Form 26AS of the deductee. Since the data will be downloaded from TAN/PAN master verified by the Department, there will be "0" mismatch situation, which is the need of the hour.</i></p> <p><i>(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)</i></p>
146.	Provision for rectification and appeal of intimation under section 200A	Under section 200A, an intimation is generated specifying the amount payable or refundable after processing of the TDS statement. However, there was no provision for appeal or rectification of such intimation and such intimation was also not deemed as a notice of demand.	<p><i>The provisions amending section 154, 156 and 246A to provide for rectification and appeal of intimation under section 200A and deeming such intimation as notice of demand may be given effect to RETROSPECTIVELY.</i></p> <p><i>(SUGGESTIONS FOR</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>Therefore, the Finance Act, 2012 had provided that such intimation would be deemed as a notice of demand under section 156. Further, the intimation generated after processing TDS statement shall be subject to rectification under section 154. Such intimation is also appealable under section 246A. However, these amendments were made effective only from 1st July, 2012. Since these amendments were necessitated on account of the genuine hardship being faced by the assesseees, the provisions incorporated to remove such hardship should be given retrospective effect.</p>	<p>RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
147.	TDS demand u/s 200A	<p>a) It has been observed that intimations are being served under section 200A on deductors, stating demands due to short deduction of tax at source. In majority of cases these demands arise due to wrong quoting of PAN in TDS quarterly statements filed by deductor/DDO. These demands involve a huge amount on penalty has also been levied.</p>	<p><i>Some mechanism may be developed to check the quoting of wrong PAN in TDS quarterly statement at the time of validation of the TDS return, i.e. the moment the return is being filed.</i></p> <p>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</p>
		<p>b) With regard to demand raised in respect of earlier years, the notice of demand so raised only specifies the amount of demand raised without any details. In case the deductor requires the details of the demand he is required to obtain a FUV file from the Department office. The file so received is</p>	<p><i>In respect of TDS demands pertaining to earlier years, the process of obtaining the FUV files for verification should be made user friendly. The FUV file should be mandatorily provided to the deductor at his registered email id so that the deductor does not have to visit the Income tax office for the same.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		then verified by the deductor and thereafter the discrepancies, if any, are brought to the notice of the Department. This is a cumbersome process and is required to be made user friendly.	(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
148.	<i>Time limit for TDS assessments of payments made to non residents</i>	Presently, there is no time limit specified by the Act for initiating & completion of TDS proceedings u/s 201 of the Act in respect of payments made to non- residents. Thus, the TDS returns are scrutinized by the assessing officers for past years without any limit, which has resulted into enormous difficulty for the assessee as it becomes practically difficult to store & retrieve data beyond four years of filing of TDS returns.	<i>It is suggested to fix a specific time limit for initiating & completing TDS proceedings u/s 201 of the Act in respect of payments made to non residents which should not be more than 4 years from the relevant financial year.</i>
149.	<i>Consequences of failure to deduct or pay TDS- section 201(1A)-:</i>	As per the provisions of section 201(1A), interest is charged on monthly basis. Even for delay in payment or deduction of tax at source by one day, interest is charged for the whole month. Under clause (ii) of section 201(1A), interest is payable at the rate of one and one-half percent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid. Delay from the due date of payment to the date of actual payment is not considered. For e.g. if the tax was deducted on 01/09/2012 the same has to be paid by 07/10/2012. If	<i>It is suggested that interest u/s 201(1A) should be charged on daily basis and not on monthly basis or if the interest is to be charged on monthly basis delay should be rounded off to the near month and the present system of considering fraction of month as full month should be dispensed with.</i> <i>It is further suggested that interest under clause (ii) of section 201(1A) should be charged for the delay FROM THE DUE DATE OF PAYMENT TO THE ACTUAL DATE OF PAYMENT.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>the tax was paid on 08/10/2012 i.e. only one day delay, interest for the two month will be charged i.e. from 01/09/2012 to 08/10/2012. It is suggested that the delay from the due date of payment to the date of actual payment should be considered for the purpose of calculating interest.</p> <p>Further, since all the returns of TDS are now days processed electronically and interest is calculated by the computer, there is no procedural hurdle in charging interest on daily basis, infact charging the same on daily basis will provide relief to the taxpayers. It may be noted that in all the indirect tax laws interest is charged on daily basis. Since the TDS is a routine business work, delay of one-two days in payment is not abnormal and punishing for such delay by charging interest for the whole month may not be appropriate.</p>	<p>PROVISIONS OF DIRECT TAX LAWS)</p>
150.	Section 206AA – Requirement of furnishing of PAN for deduction of tax at source.	<p>Section 206AA reads as “Notwithstanding anything contained in any other provisions of this act, any person entitled to receive any sum or income or amount on which tax is deductible under chapter XVIIIB, (hereinafter referred as deductee) shall furnish his PAN to the Deductor failing which tax shall be deducted at higher of three rates specified in section 206AA”.</p> <p>This section however, does not takes into account the situation where payee is not required to take PAN as per the provisions of</p>	<p><i>A proviso should be inserted in section 206AA to the effect that the provisions of this section shall not be applicable in respect of the assessee who is not required to obtain Permanent Account Number under section 139A.</i></p> <p>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>Section 139A or such payment is not taxable in India (in case of Non -Residents).</p> <p>Due to applicability of this section residents, who are not required to obtain PAN as per section 139A, will also have to take PAN. As this section has a non-obstanate clause, payer has no option but to deduct TDS at a higher rate to comply with the provisions of the said section, though may not be the intention of the legislature.</p> <p>As no exception has been made as regards the payments to a non-Resident, it is assumed that section 206AA is applicable to the payment made to a non-resident also. However, as per the provisions of Rule 114C(1)(b) of the Income-tax Rules, 1962, specifying the class or classes of persons to whom the provisions of section 139A (PAN) shall not apply, non-resident is not required to get PAN allotted in his name.</p> <p>Further, it may be noted that Section 195(5) of Direct Taxes Code Bill, 2010 reads as follows:-</p> <p><i>“Notwithstanding anything in this Code, the appropriate rate referred to in subsection (1) shall, in a case where the deductee has failed to furnish his permanent account number to the deductor (except where the deductee is not required to obtain permanent account number under section 292), be the higher of following rates, namely:—</i></p>	



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>(a) <i>twenty per cent.; and</i> (b) <i>the rate specified in sub-sections (2), (3) or sub-section (4), as the case may be.</i></p> <p>In line with the provisions of proposed section 195(5) supra those assesseees who are not required to obtain PAN should be exempted from the provisions of section 206AA of the Income-tax Act, 1961.</p>	



PART C-ADVANCE PAYMENT OF TAX

DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
151.	Section 208-Revision of Limit of advance tax	<p>The Finance Act, 2009 raised the limit to pay advance tax under section 208 to Rs.10,000. Considering the inflationary conditions prevailing in the country, it is felt that the same limit needs to be revised upwards so that the amount payable in one instalment of the advance tax exceeds at least Rs. 5,000. The present amount of Rs. 3,000 is too low. Infact, any assessee whose advance tax payable does not exceed Rs.30,000 should be allowed to pay full amount in the last instalment.</p>	<p><i>The limit to pay advance tax under section 208 be raised appropriately/- Infact, any assessee whose advance tax payable does not exceed Rs.30,000 should be allowed to pay full amount in the last instalment.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>



PART F-INTEREST CHARGEABLE IN CERTAIN CASES

DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
152.	Interest u/s 234C for newly formed Firms and Companies	As per the provisions of section 207 and section 211, the assessee is liable to pay the advance tax on the 'Current Income' of the assessee. This presupposes the existence of the assessee. In view of this, interest u/s 234C cannot be charged for the instalments of advance tax due before the date of coming into existence of a Firm or a Company. In spite of this, the Departmental Software processing the ITR does not take care of such a situation and interest u/s 234C is being charged in a routine manner.	<i>It is suggested that the Departmental Software needs to be suitable amended so that firm and companies are not required to pay interest on the short payment of instalment of advance tax u/s 234C for the period when they were not in existence.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



PART G-LEVY OF FEE IN CERTAIN CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
153.	<i>Fees under section 234E</i>	<p>a) The matters relating to TDS/TCS in a government department is handled by persons with reasonably good education background. Appropriate computer training is also given by the Government to them for day to day functioning of the system. Accordingly, the records are well maintained and seemingly there should be no issues for them in timely furnishing the statement of TDS/TCS within 30 days from the end of the quarter. However, in comparison to the same, the non-Government deductor who is a business man may not necessarily be even a graduate. The non-government deductors majorly comprise of non-corporate sector which is not very organized. Approximately less than 6000 assessee are listed companies who take the help of professionals to file statements of TDS/TCS in time. Approximately, 6,60,000 assessee are private limited Companies, but majority of them are family organizations or organizations among the friends registered as Private Limited companies under Companies Act. Further, last year there were approximately 18,00,000 tax audit assessee. This clearly reflects that more than 66% of the</p>	<p><i>It is suggested that</i></p> <p><i>a) the time limit to file quarterly TDS return for non-government deductors be also increased to 30 days as available to the government deductors. With this change there will be neither a revenue loss nor any hardship to the deductees.</i></p> <p><i>b) It is highly appreciable that the Government has taken an open mind while considering the problems of e-filing of statement of TDS /TCS and has extended the time only for Government deductors. In fact, considering the difficulties being faced by the government deductors, this circular was a step in the right direction. Since the above difficulty equally applies for other deductors also, one time amnesty is sought for all deductors with regard to all TDS statements pertaining to FY 2012-13 and FY 2013-14 to be submitted on or before a cutoff date to be decided appropriately.</i></p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>assesseees who are liable to deduct TDS are non-corporate entities comprising of Individuals, HUFs, firms etc. In addition to above, certain non corporate and NGOs are also mandatorily liable to deduct TDS.</p> <p>It has been brought to the notice of ICAI that 15 days time limit is too short for the same causing genuine hardship to the deductor, who has to deduct tax, pay tax through challan, collect the same from the bank, prepare the TDS/TCS statements and thereafter submit the same to TIN Centre, which may not always be located in the near vicinity. Also, the levy of fees under section 234E has been a matter of great concern.</p> <p>It is highly appreciable that the Government has taken an open mind while considering the problems of e-filing of statement of TDS /TCS and has extended the time only for Government deductors. In fact, considering the difficulties being faced by the government deductors, this circular was a step in the right direction. Since the above difficulty equally applies for other deductors also, one time amnesty is sought for all deductors with regard to all TDS statements pertaining to FY 2012-13 and FY 2013-14 to be submitted on or before a cutoff date to be decided appropriately.</p>	



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>								
		<p>b) According to the provisions of section 234E, where a person fails to deliver or cause to be delivered a statement within the time prescribed then he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues. But the amount of fee shall not exceed the amount of tax deductible or collectible, as the case may be.</p> <p>Considering the hardships being faced by the taxpayers due to various reasons, penal fees for late filing of TDS returns need to be changed to period wise/ slab of days instead of current system.</p>	<p><i>It is suggested to follow day wise slab system & it may be taken as:</i></p> <table border="1"><thead><tr><th><i>Period of Default</i></th><th><i>Max. Fees u/s 234E</i></th></tr></thead><tbody><tr><td><i>Upto 15 Days</i></td><td><i>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i></td></tr><tr><td><i>From 15 Days to 1 Month</i></td><td><i>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i></td></tr><tr><td><i>From 1 Month Onwards</i></td><td><i>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i></td></tr></tbody></table>	<i>Period of Default</i>	<i>Max. Fees u/s 234E</i>	<i>Upto 15 Days</i>	<i>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i>	<i>From 15 Days to 1 Month</i>	<i>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i>	<i>From 1 Month Onwards</i>	<i>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i>
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CHAPTER XIX-A
SETTLEMENT OF CASES





DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
154.	Once in life time Settlement Commission	Presently, for resolution of tax disputes government allows an assessee to approach the Settlement Commission only once and that too when the case is pending before the Assessing Officer (AO). If the case has escalated to a level above Assessing Officer, the once in a lifetime window also gets closed. This is leading to non settlement of disputes and delaying of revenue collection and costly litigation.	<i>Assesseees should be given the freedom to settle disputes through this settlement commission without the restriction of this 'once in a lifetime' conditionality. Also the assessee should be given the freedom to settle at any point of time (i.e. at any level – AO and above) of the dispute.</i> (SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
155.	Section 245A- Settlement Commission	Section 245A defines “case” to mean any proceeding for assessment under the Act, of any person in respect of any assessment year(s) which may be pending before an Assessing Officer on the date on which application for settlement of case is made. It further provides that a proceeding for assessment or reassessment or re-computation under section 147, shall not be a proceeding for assessment. Before the enactment of Finance Act, 2007, no such exclusion was provided for in this sub-section and the proceedings for assessment or reassessment or re-computation under section 147 were also considered as a proceeding for assessment. There are large number of cases	<i>It is suggested that (i) Proviso of section 245(b) along with the Explanation (i) be omitted.</i> (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		which fall under section 147. In order to reduce further litigations, it is suggested that the proceedings under section 147 may not be excluded from the definition of "case".	
156.	<i>Restoration of the provisions of erstwhile Section 245E</i>	<p>section 245E of the Act was inserted in year 1975, amended in 1984, 1987 and the provisions were made inapplicable for applications filed on or after 01-06-2007. The existing provisions of statute reads as under:</p> <p><i>"If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also.</i></p> <p><i>Provided that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date</i></p>	<i>It is suggested that the provisions of erstwhile section 245E be restored in Chapter XIX-A, Settlement of Cases for proper and justified disposal of cases of applicants.</i>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p><i>of application for settlement under section 245C exceeds nine years.</i></p> <p><i>Provided further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 245C is made on or after the 1st day of June, 2007.”</i></p> <p>The provisions of this section empowered the Settlement Commission to reopen the previously completed proceedings in respect of assessment year(s) other than the year(s) for which application was filed by the applicant where it is necessary or expedient for proper disposal of the case.</p> <p>The section also provided limitation to such powers of the Settlement Commission i.e. re-opening must be with the concurrence of the applicant and the power cannot extend to a period beyond nine years (as amended in year 1987) from the end of the assessment year to which such proceeding relates.</p> <p>However, with the insertion of new scheme of settlement before the Settlement Commission w.e.f. 01-06-2007, this section was made inapplicable for applications filed on or after 01-06-2007.</p> <p>The inapplicability of this section placed restriction on the Settlement Commission to limit</p>	



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		the settlement to the year(s) in respect of which application has been filed by the applicant thereby depriving the applicant from relief in respect of other preceding completed assessment years(s) on the same issue or same modus operandi.	



CHAPTER XIX-B
ADVANCE RULINGS





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
157.	Introduction of Advance ruling for residents	<p>In order to provide the facility of determining the tax liability of non- residents in advance and with a view to avoid disputes in respect of assessment of income tax liability in the case of non-residents, a scheme of advance ruling was introduced by Finance Act, 1993. The scheme enables the non-resident to obtain, in advance, a binding ruling from the authority for advance ruling on issues which could arise in determining their tax liabilities. Time consuming and expensive litigation can, then be avoided. Such issues may relate to transactions undertaken or proposed to be undertaken by the non-resident applicant. The Scheme has been very successful in avoiding tax-litigation in case of non- residents.</p>	<p><i>It is suggested that the same scheme should be introduced for resident's tax purposes also. In case of residents also, it has been observed that assessee takes one interpretation of law and executes the transactions which is denied by the department causing hardship of paying taxes which he thought is not actually payable.</i></p> <p><i>Further, in order to avoid unnecessary application, the scheme can be so framed that only transactions involving certain threshold of tax implication can apply say transactions having tax implications of Rs. 1 crore or more or TDS implications of Rs.50 Lakhs or more. Alternatively, a fee for advance ruling can be fixed in a way that small and unnecessary applications are avoided.</i></p> <p><i>(SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)</i></p>





CHAPTER XX
APPEALS & REVISION





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
158.	Delay by Assessing Officer in issuing Order giving effect to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order:	<p>It has been experienced that when any order of higher appellate authorities is received, and moreover when the order is in favour of the assessee, the Assessing officer delays in issuing the Order giving effect to such appellate orders. Due to this delay, the refund arising from such appellate orders also gets delayed.</p> <p>Secondly, it is also observed that in most of the cases the issuing of Refund Cheques/ Warrants are purposefully delayed and the interest on such refunds, as per the provisions of the Income-tax Act, is calculated only up to the date of issue of Assessment order / Order Giving effects to appellate orders. This results in, assessee being deprived of interest on the delayed refunds and also assessee does not earn any interest on the Interest on Refunds for the period of such delay of issuing of refund warrants by the Assessing officers.</p>	<p><i>It is suggested that time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act. If the order provides for fresh modification of the assessment, the same should be given effect to within 12 months from the end of the month in which it is received by the Commissioner.</i></p> <p><i>Also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act)</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>





CHAPTER XX-B

REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
159.	Inclusion of payments and receipts made through the modes like RTGS, NEFT, EFT and ECS as valid modes of fund transfers under sections 269SS and 269T of the Income-tax Act, 1961	<p>a) Section 269SS of the Income-tax Act, 1961 requires that acceptance of any loan or deposit exceeding Rupees twenty thousand may be made only by an account payee cheque or an account payee bank draft.</p> <p>Further, Section 269T of the Income-tax Act, 1961 requires that the repayment of any loan or deposit exceeding Rupees twenty thousand may be made only by an account payee cheque or an account payee bank draft.</p> <p>However, now-a-days many banking transactions take place by way of Net banking facilities that include Real Time Gross Settlement (RTGS), National Electronic Funds Transfer (NEFT), Electronics Funds Transfer (EFT) and Electronic Clearing Service (ECS). Use of payment gateways for online transactions as well as credit cards is also on the rise. In fact section 80D which provides for deduction in respect of medical insurance premium permits any mode of payment other than cash. Similar provision may be incorporated in section 269SS and section 269T.</p>	<p><i>a) It is suggested that mode of transfers like RTGS, NEFT, EFT, ECS etc. be included as valid modes of fund transfers under section 269SS and 269T of the Income-tax Act, 1961. Alternatively, section may provide for any mode of payment other than cash on the lines of section 80D.</i></p> <p><i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i></p>





CHAPTER XXI-
PENALTIES IMPOSABLE





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
160.	Initiation of penalty proceeding in every assessment order:	Assessing officers initiate penalty proceedings in each and every assessment order in view of Honble Supreme Court judgement in case of Dharmender Textile 306 ITR 277 [2008], irrespective of the fact whether or not there is any actual concealment of Income or furnishing of inaccurate particulars of income by the assessee. It has been noticed that even in cases where there is difference in interpretation of provisions or wherever there are two views arising, the penalty proceedings are initiated. This is causing undue hardship to the assessee who have to file separate appeal for dropping of such penalty proceedings leading to prolonged litigation	<p><i>(1) Suitable remedial measures should be incorporated in the Act providing relief to the genuine hardship faced by the assessee on account of imposition of penalty even where there is no concealment of income.</i></p> <p><i>(2) Further, in respect for pending cases, to reduce litigations, it is suggested that a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also be introduced. It is suggested that in cases where addition made is NOT more than 50% of income or Rs.10,00,000 whichever is less:</i></p> <ul style="list-style-type: none"><i>a) Penalty under section 271(1)(c) may be dropped.</i><i>b) 50% of the interest levied may be waived off.</i><i>c) No further appeals should be allowed to be filed either by the Department or by the assessee similar to existing provisions of Central Excise.</i> <p><i>(3) Where unexplained money, income or expenditure is identified during the course of assessment or unidentified income not falling under section 68 and 69 is identified and added it shall be chargeable to tax at maximum marginal rate.</i></p> <p><i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i></p>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
161.	Penalty where search has been initiated- Section 271AAB	<p>Section 271AAB provides for imposition of penalty@10% on undisclosed income found during the course of search and admitted at the stage of search. Undisclosed income not admitted at the stage of search but disclosed in the return of income filed after the search to attract penalty @ 20%. These are covered under clauses (a) and (b) of section 271AAB. In other cases, i.e. cases covered under clause (c), penalty to range between 30% to 90% of undisclosed income.</p> <p>Sub-section (3) provides that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied under this section.</p> <p>However, it may not be justified to execute prosecution proceedings where a person has disclosed such income in the course of search or before filing his return of income. Therefore, the prosecution provisions should be made applicable only in respect of cases covered under clause (c).</p>	<p><i>Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied only under clause (c) of this sub-section, and not in respect of cases covered under clauses (a) and (b).</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>
162.	<i>Rationalization of Section 271D & 271E</i>	<p>As per section 271D & 271E, if a person accepts/repay in loan or deposit, as the case may be in contravention with the provisions of section 269SS/269T, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit.</p> <p>The penal provisions of section 271D & 271E may be restricted to maximum marginal rate of tax i.e.</p>	<p><i>To restrict the levy of penalty to the maximum marginal rate of tax i.e. 30% or the slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T</i></p>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		30% or the slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T.	
163.	Penalty for failure to furnish TDS/TCS statements- Section 271H	<p>The Finance Act, 2012 had inserted the penalty provisions under section 271H providing for penalty ranging between Rs.10,000 to Rs.1,00,000 for failure to furnish quarterly statements of TDS and TCS within the time prescribed under the Income-tax Rules, 1962.</p> <p>However, such penalty would not be levied if the person has paid the taxes deducted or collected along with fee and interest to the credit of the Central Government and has filed the statements within a period of one year from the respective due dates i.e., namely, 15th July, 15th October, 15th January and 15th May, respectively for the quarters ending 30th June, 30th September, 31st December and 31st March.</p> <p>The TDS/TCS statements form the basis of preparation of annual tax statement in Form 26AS. The deductee is required to confirm the exact tax deducted/collected at source and remitted to the Government by verifying Form 26AS online, and thereafter pay the remaining taxes by way of self-assessment tax. However, if TDS/ TCS statements are permitted to be filed within one year of the due date prescribed for each quarter on account of non-levy of penalty, then the same</p>	<p><i>i. Sub-section (3) may be amended to provide that penalty provisions under section 271H would not be attracted if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he has delivered or caused to be delivered the statement referred to in section 200(3) or the proviso to section 206C(3) before the expiry of due date of filing of return of income of the previous year in which the tax was so deducted or collected, irrespective of the quarter to which the tax relates.</i></p> <p><i>ii. Penalty may be prescribed having regard to quantum of default and the period of delay, and no discretion may be given to the Assessing Officer in this regard. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.</i></p> <p>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</p>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>would extend beyond the due date of filing return of income of that assessment year in respect of the second, third and fourth quarters. It may cause genuine hardship to the deductees as they would not be able to verify the TDS/TCS credited to their account, for payment of self-assessment tax before the due date of filing of return of income.</p> <p>Therefore, it is felt that penalty provisions should be attracted if such statements are not filed at the latest before due date of filing return of income.</p> <p>Further, Section 271H provides for the minimum and maximum penalty, within which range, penalty can be imposed. The discretionary powers provided to the Assessing Officer in levying a penalty ranging from Rs.10,000 to Rs.100000 may lead to hardship to the assessee.</p> <p>Discretion element in levying penalty should be removed. Penalty may be prescribed having regard to quantum of default and the period of delay. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.</p>	



CHAPTER XXIII-
MISCELLANEOUS





DETAILED SUGGESTIONS

<i>Sr. No.</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
164.	Signing of notices under Section 282A	Section 282A provides for issue of any income tax notice or other document without it being signed by the requisite authority. Although, the said section has been provided in the context of computerized generation of notices and other documents, this can result in widespread misuse of powers and harassment. The assessee who is willing to receive communications through email should be given notices or any other document in this form. In such case also, the signed hard copy should be sent subsequently.	<i>It is suggested that the computerized notice / document should have a separate control like provision for a digital signature because these are legal / statutory documents and this aspect should specifically be incorporated in section 282A. The signed hard copy should in any case be sent subsequently. In respect of manual notices/documents the section should also provide that signatures will be mandatory.</i> (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
165.	Omission of section 282B- Document Identification Number	In order to improve the standards of service and transparency in the functioning of the Income-tax Department, a computer based system of allotment and quoting of Document Identification Number (DIN) in each correspondence sent or received by the Income-tax Department was proposed to be introduced with effect from 1 st October, 2010 to facilitate tracking of documents and alleviate the taxpayers grievances. Accordingly, section 282B was inserted by the Finance (No.2) Act, 2009, to provide that every income-tax authority shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or	<i>Section 282B may be reinstated and the date of implementation of DIN may be postponed till the availability of requisite infrastructure on all-India basis.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



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		<p>assessee or any other person and such number shall be quoted thereon.</p> <p>Further, it was provided that every document, letter or any correspondence, received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number.</p> <p>Since it is essential to have the necessary infrastructure to cover the full range of services specified in section 282B on pan-India basis, the date for implementation of the DIN was extended by the Finance Act, 2010 to 1st July, 2011.</p> <p>However, the Finance Act, 2011 omitted this section, on account of the practical difficulties due to non-availability of requisite infrastructure on an all India basis.</p> <p>It is largely opined that introduction of this provision would increase the accountability of the tax administration. For proper discharge of responsibilities, accountability is a necessary counter balance. Therefore, the provision for implementation of DIN should be reinstated.</p>	
166.	Section 285BA(3) Information to be furnished in the Annual Information Return	<p>Section 285BA may appropriately be amended to require information regarding the following financial transactions involving an amount over and above specified sums:</p> <p>(a) Payment received by tour operators exceeding a specified sum.</p>	<p><i>The meaning of "specified financial transactions" under section 285BA(3) may be widened to include within its ambit the aforesaid transactions.</i></p> <p><i>Further, in respect of the above mentioned transactions, where</i></p>



	<p>(b) Information regarding Government tenders where the value exceeds a specified amount. This information may be provided by the concerned Government Department.</p> <p>(c) Sales and purchases of shares exceeding a specified amount respectively in the case of day traders. This information can be filed by the concerned brokers who are dealing with the day traders.</p> <p>(d) Receipt of donations by trusts or Institutions exceeding a specified sum. Such information may be filed by the concerned trusts or institutions.</p> <p>(e) Educational fees paid in excess of a specified sum. The concerned educational institution should furnish the relevant information to the Department.</p> <p>(f) Compulsory PAN on air-ticket bookings for foreign overseas package tours Information to form part of annual information return under section 285BA. Persons booking international air-tickets should be required to give their PAN while booking tickets when such foreign travel is organized as foreign package tours. This step will bring many high value transactions into the data system, which can be</p>	<p><i>the PAN is not provided by the payer, the provisions like TCS may be made applicable to the payee. Accordingly, the payee should be allowed to collect tax at an appropriate rate. Later, in case the deductee provides PAN within a specified period to the deductor, the deductee should be provided with a certificate like TCS certificate for claiming the same in the return of income. In case the deductee does not provide PAN with the specified period, the tax so collected would be added to the revenue of the Government.</i></p> <p>(SUGGESTION TO IMPROVE TAX COLLECTION)</p>
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		<p>scrutinized for expanding the tax base. Alternatively, the person who is funding the package tour may be required to give his PAN. Those persons who are not having PAN can be asked to give a suitable declaration. To begin with, this requirement may be in respect of those persons who incur expenditure on air travel above a prescribed ceiling limit. Further, the airline companies should be required to forward such declarations to their respective Assessing Officers. This information can be included as part of the return under section 285BA.</p>	
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PART III

**SUGGESTIONS RELATING TO THE PROVISIONS
OF WEALTH-TAX ACT, 1956**





DETAILED SUGGESTIONS

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
167.	Taxable Wealth - to exempt motor cars	<p>The definition of "assets" was amended in the year 1992. The then Honble Finance Minister in his Budget speech had mentioned :</p> <p>"67. The Wealth-tax Act, 1957 has far too many exemptions making its administration enormously complicated. The valuation of certain assets such as shares also presents problems, since very high market values reflecting speculative activity can lead to a heavy burden on shareholders who are long term investors. There is also no distinction at present between productive and non-productive assets. The Chelliah Committee has suggested that, in order to encourage the taxpayers to invest in productive assets such as shares, securities, bonds, bank deposits, etc. and also to promote investments through Mutual Funds, these financial assets should be exempted from wealth tax. Wealth tax should be levied on individuals, Hindu undivided families and all companies only in respect of non productive assets such as residential houses including farm houses and urban land, jeweller, bullion, motor cars, planes, boats and yachts which are not used for commercial purposes. The Committee has further suggested that such tax should be at the rate of one</p>	<p><i>The amendment in the definition of "assets" was made by the Finance Act, 1992 with a view to promote investment in productive assets. In line with intention of the lawmakers, motor cars used for all commercial purposes i.e. whether in business or profession should be excluded from the definition of "assets" since they are productive assets.</i></p>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		<p>percent., with a basic exemption of Rs.15 Lakhs. I propose to accept this recommendation and I hope this change will encourage investments in productive assets and discourage investment in ostentatious non-productive wealth.”</p> <p>Accordingly, the definition of “assets” under section 2(ea) of the Wealth-tax Act comprises inter alia motor cars other than those used by the assessee in the business of running them on hire or as stock-in-trade. As intended by the abovementioned speech of the then Finance Minister, motor cars “used in the business of running them on hire or as stock-in-trade” were not treated as assets as they were considered as productive assets.</p> <p>The motor cars comprised in business assets are meant for efficient and smooth operation of the business. Since the motor cars used in business or profession directly or indirectly contribute to the productivity of the business or profession, they should be exempted from the definition of “assets” under section 2(ea) of the Wealth tax Act.</p>	
<i>168.</i>	<i>Increment in Cash Limit</i>	<p>As there is tremendous rise in the cost of living from last few years, it is therefore needed to enhance the basic exemption limit of cash in hand.</p>	<p><i>Cash in hand limit should be increased from Rs. 50,000 to Rs. 2, 50,000.</i></p>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
169.	<i>Enhancement of the Basic Exemption limit</i>	The basic exemption limit under the Wealth tax is Rs. 30,00,000. There has been a tremendous rise in the value of properties in last few years, it is therefore, suggested that the basic exemption limit, beyond which wealth tax is charged be enhanced.	<i>The basic exemption limit, beyond which wealth tax is charged be enhanced to Rs. 1 Crore.</i>



ANNEXURE I

S. No.	Section	Limit (A) (Rs.)	Year of introduction/ last modification	Suggestive limit as per current CII (Rs)
2	Workmen comp- 10(10B)	500,000.00	April,1976(notification no. 10969 dt. 25-6- 1999	10,00,000
3	Leave ench- 10(10AA)	25,500.00	Finance act ,1982 wref 1-4-1978	
		300,000.00	May,2002	5,00,000
4	VRS- 10(10C)	500,000.00	April,2001(amended)	10,00,000
5	Entertainment Allowance 16(ii)	Exempt: i)5000 ii)20% BS iii)Actually Recd	April,2002(Amended)	12,000
6	Sec: 10(14) read with Rule 2BB			
	i) Hilly Area Compensatory all.	Rs.800 p.m		3,000
	ii) Children education allowance	Rs. 100 p.m	April, 89 (Amended)	500
	iii) Hostel allowance	Rs. 300 p.m		1500
	iv)Transport allowance	Rs. 800 p.m		3,000
7	Educational facility- 17(2)	Rs. 1000 p.m		3,000 pm
8	Deduction u/s 24 (house prop)	i) Rs. 30,000 ii) Rs. 1,50,000	April, 2002	3,00,000
10	Sec - 44 AA: Maintenance of A/c's	if income > 1,20,000, or gross receipts > 10,00,000 in any of 3 years imm. Preceding the PY.	April,1976	
11	Sec-44 AB Audit of accounts	Turnover(business) exceeds 1 crore, Gross receipts(profession) exceeds 25 lakhs	inserted by finance act 1984 April , 2013(amended)	
16	Sec-17	Motor car (perquisite): (A) Car owned by employee: If car is partly used for official & partly for private purpose:	Circular 15/2001, dated Dec 12,2001	A)3,968/5,290 B)(ii) 1,323/1,984



The Institute of Chartered Accountants of India

		Actual expenditure Less: Amount of office use (ie 1800pm if engine doesnot exceed 1.6 lt or rs. 2400 pm if exceeds 1.6 ltr and rs. 900 pm if chauffeur is provided) (B) Car owned or hired by employer: (i) If car is partly used for official & partly for private purpose: 1800pm if engine doesnot exceed 1.6 lt or rs. 2400 pm if exceeds 1.6 ltr and rs. 900 pm if chauffeur is provided. (ii) If car is partly used for official & partly for private purpose & maintenance expenses (pvt use) borne by employee: Rs.600 pm if engine doesnot exceed 1.6 lt or rs. 900 pm if exceeds 1.6 ltr and rs. 900 pm if chauffeur is provided.		
		Lunch/refreshment (perk): Cost to employer in excess of Rs.50 per meal Less: recovered from employee	Circular 15/2001, dated Dec 12,2001	110
		Interest free or concessional loans: Small loans upto Rs. 20,000 in the aggregate are exempt. Loans for medical treatment specified in rule 3A are also exempt, provided the amount of loan for medical reimbursement is not reimbursed under any medical insurance scheme.	Circular 15/2001, dated Dec 12,2001	50,000
		Gift, voucher or token in lieu of gift: Rs.5000	Circular 15/2001, dated Dec 12,2001	11,021
17	Sec- 64(1A) [Deduction u/s 10(32)]	Income of minor: Rs. 1500	April,1993	5,000
18	Sec- 80C	100,000.00	April,2006	1,50,000



The Institute of Chartered Accountants of India

24	Sec- 80D	Rs. 15,000 : others Rs. 20,000 : in case of senior citizen	April,2009 (substituted) Inserted by income tax (amendment)act,1986	20,000 SC 40,000
25	Sec-80DD	Rs.1,00,000: if disability is 80%or above Rs.50,000:other cases	April,2004 (inserted by finance act 1990	i)1,00,000 ii)1,50,000
26	Sec- 80DDB	Rs.40,000 or actual expenditure} w.e.I (others) Rs.60,000 or actual expenditure} whichever is lower (senior citizen)	April,2004 (inserted by finance (no.2)act 1996	i)1,00,000 ii) 1,50,000
27	Sec-80EE	100,000.00	April,2014	1,00,000
28	Sec-80GG	i)Rs.2000 pm ii)25% of total income iii)excess of actual rent paid over 10% of total income whichever is lower	April,1998(reintroduce d)	5,000 pm
29	Sec- 80QQB	Rs.3,00,000 or whole of such income } whichever is lower	April,2004	5,00,000
30	Sec-80RRB	Rs.3,00,000 or whole of such income } whichever is lower	April,2004	5,00,000
31	Sec-80TTA	10,000.00 All Deposits	April,2013	15,000
32	Sec-80U	Rs.1,00,000(severe disability ie 80% or above) Rs.50,000 (other cases)	April,2004	i)1,00,000 ii) 1,50,000
58	Sec-80P	Interest Income -Rs.20,000 Profit-Rs.50,000/Rs.1,00,000 (Consumer cooperative)	April,1968 April,1999(Substituted)	i) 48,278 ii) 3,00,000/1, 50,000



ANNEXURE II

Contents	
Introduction.....	290
Definition of R&D for software products.....	290
Definition of R&D for software products.....	290
Qualification as R&D Costs	292
Activities that cannot be classified as R&D.....	292
Capitalization of R&D costs	292
Accounting for R&D costs.....	295
Conclusion.....	297



Introduction

The clear definition of software product R&D activities and accounting of costs associated is unavailable in current scenario. The R&D recognition is of high value for the growing number of software product startups as it acts as a channel into many government funding schemes.

Also, tax benefits which can be carried over even if the startup is at a loss or fails, which is very high likely, the founders still have an option to be acquired by a bigger company for the technology or the team. Hence, the company is incentivised to do the same because it would get the benefit of the tax deduction from losses being carried forward. This will be a huge step in creating parity between Indian product startups and the startups in US or Canada which have these advantages.

To nurture the potential of Indian Product startups it becomes highly critical to revise the policies to compete globally. The first step towards influencing government bodies to revise the policies is to articulate a concise definition of R&D for software products.

Definition of R&D for software products

(as defined by UK government)

R&D includes developments leading to:

- New or improved products, new or improved solutions, efforts to changing customer requirements, cost reduction
- Development of new technologies, solutions, architectures, integration designs, protocols, specialized components and packages
- Noticeable and quantifiable improvements to existing systems/processes affecting security, scalability and availability
- Redesign of existing systems with fundamentally new technologies or re-architecture of systems to enable use of new technologies (such as cloud)
- New or improved data processing solutions, risk management solutions, scalable engines to automate work flows, message-oriented middleware are some of the examples/categories of new solutions developed under R&D umbrella

Definition of R&D for software products

(as defined in FASB Statement No. 2)

As general definitions from FAS 2 section 8, research is planned search or critical investigation aimed at discovery of new knowledge. Development is the translation of research findings into a plan or design for a new product or process. Development deals more with the initial application of knowledge, often to determine technological feasibility

- The translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process



The Institute of Chartered Accountants of India

whether intended for sale or use. It includes the conceptual formulation, design, and testing of product alternatives, construction of prototypes, and operation of pilot plants

- It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, and other ongoing operations even though those alterations may represent improvements and it does not include market research or market testing activities
- For example, engineering activity required to advance the design of a product to the point that it meets specific functional and economic requirements and is ready for manufacture
- Efforts to develop a new or higher level of computer software capability intended for sale (but not under a contractual arrangement) would be a research and development activity
- Developing or significantly improving a product or process that is intended to be sold, leased, or otherwise marketed to others is a research and development activity. Similarly, developing or significantly improving a process whose output is a product that is intended to be sold, leased, or otherwise marketed to others is a research and development activity
- All costs of planning, designing, and establishing the technological feasibility of a computer software product would be research and development costs
- Research and development activities should be considered incomplete until technological feasibility has been objectively established and that research and development activities in the software product process include:
 - All planning and designing (both product design and detail program design)
 - Any coding and testing necessary to establish technological feasibility
- All software creation costs incurred prior to establishing technological feasibility are to be charged to expense when incurred as research and development costs
- The research and development classification of Statement 2 would apply only to the costs of designing the product and determining the availability of proven technology for product development
- All software creation costs incurred subsequent to establishing technological feasibility are capitalized and reported at the lower of cost or net realizable value
- The technological feasibility of some products cannot be established with completion of the detail program design because high-risk development issues remain. Resolution of all uncertainties related to identified high-risk development issues is therefore included as a requirement for establishing technological feasibility
- Both establishing technological feasibility of the software component and completing research and development activities for the hardware component are necessary for beginning of capitalization of software costs



Summary of FASB Statement No. 2: This Statement establishes standards of financial accounting and reporting for research and development (R&D) costs. This Statement requires that **R&D costs be charged to expense when incurred**. It also requires a company to disclose in its financial statements the amount of R&D that it charges to expense.

Qualification as R&D Costs

(As per UK government)

- Salary costs of technical and other employees directly involved in R&D work, and of those indirectly involved in eligible R&D projects
- Costs of consumable items employed in the R&D process
- 65% of contract staff costs
- Cost of software licences, power and fuel used in the R&D project
- R&D subcontracted to individuals or universities can be claimed but not if sub contracted to a corporate third party entity
 - Specifically for small and medium enterprises, R&D relief can be claimed for 65% of the costs of subcontracting to third party

Activities that cannot be classified as R&D

- Statement 2, with its mandatory expensing requirement, extends a range of routine production activities to the classification of research and development because it assigns the bulk of computer programming activities (detail program design, coding, and testing). Certainly, much research and development type activity does take place in the computer software industry. However, most detail program design and coding activities are not discovery or design-oriented in the sense of Statement 2, they are just the meticulous execution of a plan with skilled employees applying proven methods as in any production process
- Costs incurred to purchase computer software are not research and development costs unless the software is for use in research and development activities

Capitalization of R&D costs

- Increasing the capitalization rates reduce operating expenses and lead to better EPS results in a tough quarter, while during strong quarters management teams recognize a little bit more R&D expenses to balance things back out



The Institute of Chartered Accountants of India

- Companies that provide software as a service will capitalize R&D expenses associated with the software that supports those SaaS efforts as they are developing software to be used internally, and it is only the service that is being provided to the customer
- Change in the ASC rules causes some software companies to have to capitalize a portion R&D expenses

The old rule: ASC 985-20 guided majority of software companies

- ASC 985-20. ASC 985-20 states that R&D costs must be expensed on the income statement until “technological feasibility” is established. Technological feasibility is defined as completion of all planning, designing, coding, and testing necessary for the product to be produced to meet its designed functions, features, and performance. Then the company may capitalize the remaining costs until the product is released to market
- By capitalizing these costs and amortizing them over a (subjective) time period, companies are able to boost their EPS by spreading R&D costs incurred in a quarter over a long period of time. The capitalization rate could periodically be changed, allowing management to subjectively fluctuate the levels
- In late 1990's, many software companies chose to move to a practice of expensing 100% of R&D costs as the time between the establishment of technological feasibility and commercial release of software was minimal. It resulted in insignificant or no capitalization of internally developed software costs.

The new rule: ASC 350-40 impacts companies offering SaaS

- However, as per the new rule, companies with SaaS model have the software developed internally and is never available as a product to be acquired or purchased, it is delivered as a service (*Software-as-a-Service*)
- Majority of the new age companies capitalize some portion of the R&D budget. The largest amounts of capitalization are observed from SaaS (or Infrastructure as-a-Service (IaaS)) companies such as Akamai, RackSpace, Verisign, and Neustar
 - Since the software is used internally for the company to deliver that service, they are covered by ASC 350-40
- According to the new rule, ASC 985-20, the length of time you may amortize is the greater of:
 - The ratio of revenue in the current period to the total estimated revenue of the product over its entire life or
 - The estimated economic life of the product



- For example,
 - if a company decides that the revenue over the life of the product is expected to be \$50M but only \$10M in revenue in the current period, they can amortize the R&D costs over a 5-year period ($\$50M/\$10M$) at \$2M per year ($\$10M$ in capitalized costs/5-year period)
 - Holding the current revenue constant at \$10M but raising the expected future revenue to \$60M or \$75M means that they can amortize over a 6 and 7.5 year, respectively
 - Similarly, extend the estimates of the useful life of the product, the amount amortized in each period is reduced. By extending the estimated useful life of the product from, 2 years to 3 years one can reduce the annual amortized R&D costs of the product by 33% from \$5M per year ($\$10M$ of capitalized costs/2 year economic life) to \$3.3M per year ($\$10M$ of capitalized costs/3 year economic life)
 - A company has some subjectivity in its estimations, and the effects have a direct impact on how much the company realizes in expenses on its income statement
- Example - EMC
 - Research and development ("R&D") costs are expensed as incurred
 - R&D costs include salaries and benefits, consultants, facilities related costs, material costs, depreciation and travel
 - Software development costs incurred subsequent to establishing technological feasibility through the general release of the software products are capitalized
 - Technological feasibility is demonstrated by the completion of a detailed program design or working model, if no program design is completed
 - Capitalized costs are amortized over periods ranging from eighteen months to two years which represents the products' estimated economic life
- Example – Microsoft
 - It must expense all costs until it has completed the activities (planning, designing, coding, and testing) necessary to establish that it can produce the product to meet its design specifications
 - It should capitalize subsequently incurred costs and amortize them to current and future periods
 - Software purchased for alternative future uses can be capitalized



The Institute of Chartered Accountants of India

- The rule applies to only the development of software that is to be sold, leased, or otherwise marketed to third parties
- **ASC 350-40 defines three stages of internal use software development, which are preliminary project, application development, and post-implementation/ operation**

ASC 350-40 treatment of R&D cost

Stage	Preliminary Project	Application Development	Post-Implementation/Operation
Activities within stage	Concept formulation	Design path	Training
	Evaluation of alternatives	Coding	Maintenance
	Final selection	Installation	
		Testing	
Treatment of costs	Expense as incurred	Capitalize	Only capitalize costs associated with upgrades or enhancements, otherwise expense as incurred

- **An example following the new rule:**
 - On page 7 of its 2012 10K, Akamai says, “In addition, for the years ended December 31, 2012, 2011, and 2010, we capitalized \$50.6 million, \$40.4 million, and \$31.1 million, respectively, of external consulting and payroll and payroll-related costs related to the development of internal-use software used by us to deliver our services and operate our network.” Akamai considers the software it develops that is the Akamai network to be for internal use in order for the company to deliver its content delivery network (CDN) and related services. That is why it falls under the newer rule

Accounting for R&D costs

- All costs incurred to establish the technological feasibility of a computer software product to be sold, leased, or otherwise marketed are research and development costs. Those costs shall be charged to expense when incurred as required by FASB Statement No. 2, Accounting for Research and Development Costs
- For purposes of this Statement, the technological feasibility of a computer software product is established when the enterprise has completed all planning, designing, coding, and testing activities that are necessary to establish that the product can be produced to meet its design specifications including functions, features, and technical performance



The Institute of Chartered Accountants of India

requirements. At a minimum, the enterprise shall have performed the activities in either (a) or (b) below as evidence that technological feasibility has been established:

- If the process of creating the computer software product includes a detail program design:
 - The product design and the detail program design have been completed, and the enterprise has established that the necessary skills, hardware, and software technology are available to the enterprise to produce the product
 - The completeness of the detail program design and its consistency with the product design have been confirmed by documenting and tracing the detail program design to product specifications
 - The detail program design has been reviewed for high-risk development issues (for example, novel, unique, unproven functions and features or technological innovations), and any uncertainties related to identified high-risk development issues have been resolved through coding and testing.
- If the process of creating the computer software product does not include a detail program design with the features identified in (a) above:
 - A product design and a working model of the software product have been completed
 - The completeness of the working model and its consistency with the product design have been confirmed by testing

Production Costs of Computer Software

- Costs of producing product masters incurred subsequent to establishing technological feasibility shall be capitalized. Those costs include coding and testing performed subsequent to establishing technological feasibility. Software production costs for computer software that is to be used as an integral part of a product or process shall not be capitalized until both:
 - Technological feasibility has been established for the software and
 - All research and development activities for the other components of the product or process have been complete
- Capitalization of computer software costs shall cease when the product is available for general release to customers. Costs of maintenance and customer support shall be charged to expense when related revenue is recognized or when those costs are incurred, whichever occurs first



Amortization of Capitalized Software Costs

- Capitalized software costs shall be amortized on a product-by-product basis. The annual amortization shall be the greater of the amount computed using:
 - The ratio that current gross revenues for a product bear to the total of current and anticipated future gross revenues for that product or
 - The straight-line method over the remaining estimated economic life of the product including the period being reported on. Amortization shall start when the product is available for general release to customers

Disclosures

The disclosure requirements for research and development costs in Statement 2 apply to the research and development costs incurred for a computer software product to be sold, leased, or otherwise marketed

Conclusion

It is critical that the government works with the industry and facilitates the growth of the software product startups in India. To realize the potential opportunities, startups need to be able to define clear value and enhance their attractiveness in order to get funding and competitive valuations in the global market.