PRE-BUDGET MEMORANDUM - 2020

DIRECT TAXES
AND
INTERNATIONAL TAXATION

THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA

NEW DELHI

PRE-BUDGET MEMORANDUM – 2020
DIRECT TAXES AND INTERNATIONAL TAX

1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum - 2020 on Direct Taxes and International Tax to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2020-21.

1.2 The suggestions have been broadly categorized under the following heads:

Part A : Suggestions relating to the policy & provisions of Income-tax Act, 1961

Part B : Suggestions for improving Tax Administration and Citizen Services

Part C : Suggestions pertaining to International Taxation

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

V. Check tax avoidance

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PART A

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

CHAPTER I

PRELIMINARY

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
1.	***Section 2(42A) – Reduction in holding period in case of immovable property, being land or building or both, to qualify as long-term capital asset – Consequential amendments to be made in sections 54, 54B, 54D and 54F***	The Finance Act, 2017 amended section 2(42A) so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long-term capital asset. The same is done to promote the real estate sector and to make it more attractive for investment. **Issue** Consequential amendments for reducing the holding period of immovable property from 3 to 2 years is required to be made in sections 54, 54B, 54D and 54F in line with the amendment in section 2(42A). At present, these sections restrict transfer of new assets purchased for 3 years.	***It is suggested that consequential amendments may be made in sections 54, 54B, 54D & 54F so as to enable the holding period of the new asset purchased to be reduced to 2 years from 3 years in case of land and/or building.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Chapter III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
2.	***Section 10(12A) – Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers under section 10(12A) – Similar amendment may also be made in section 10(12B)***	For A.Y. 2018-19, section 10(12A) provides for an exemption of upto 40% of the total amount payable to an employee contributing to the NPS on closure of his account or on his opting out the scheme. Further, in cases of partial withdrawal from NPS, section 10(12B) provides for exemption of upto 25% of contributions made by an employee. These exemptions were, however, not available to non-employee assessee contributing to NPS. The Finance Act, 2018 has extended the benefit of exemption under section 10(12A) to all assessees, in order to provide a level playing field to both employee and non-employee assessee subscribers. However, the Finance Act, 2018 does not contain a similar amendment in respect of benefit of exemption under section 10(12B), consequent to which such benefit of exemption in case of partial withdrawal continues to be restricted to employees alone. To provide equity between the employee and non-employee subscriber, similar amendment may be made in section 10(12B) to extend the benefit available thereunder to non-employee subscribers.	***It is suggested that the amendment as made in section 10(12A) may also be made in section 10(12B) thereby extending the benefit of exemption in case of partial withdrawal to non-employee subscribers as well. The said amendment would also be in line with the intention of the legislature to provide a level playing field to both types of subscribers to NPS.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
3.	***Section 10(13) - Payment from approved superannuation fund***	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 **or otherwise**. 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	***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.***

Sr. No	Section	Issue/Justification	Suggestion
		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. 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.	***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
4.	***Section 10(23C) - Mandatory application of income by charitable trusts/ institutions***	Application of income is mandatory 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.	***Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts / institutions.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
5.	***Section 10(23C) - Annual Receipts***	Under section 10(23C)(iiiad) and (iiiae) 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	***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***

Sr. No	Section	Issue/Justification	Suggestion
		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. It is not clear as to whether: (a) for computing "annual receipts" only the receipts of such institutions from educational/hospital activities alone are to be considered each year; (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"; (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 receipts since they are not received annually.	***way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.*** ***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.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
6.	***Section 10(23C) - Rationalisation of Provisions***	The 15th Proviso to Section 10(23C) states that application for obtaining approval under this section shall be made on or before 30th September of the relevant assessment year from which the exemption is sought. For example, if an institution seeks approval for Financial year 2017-18, it will have to apply up to 30th September 2018. Further, the 9th proviso to Section 10(23C) states that order granting approval or rejection shall be passed within 12 months from the end of month in which such application was received. In view of this proviso, in respect of applications received on 30th September 2018, the order has to be passed on or before	***It is suggested that:*** • ***Such application should be allowed to be made at any time during the financial year for which exemption is sought even if the annual receipts have not exceeded or is not expected to exceed the limit of Rs 1 crore.*** • ***Time limit for granting approval may be reduced from 12 months to "within 4 months from the end of the month in which application has been***

Sr. No	Section	Issue/Justification	Suggestion
		30th September, 2019. So the status of the application is not known till next 12 months i.e. for 2 financial years. If such institution is not granted approval as on 30th September 2019 then it will have to pay income tax for Financial year 2017-18 and 2018-19. Resultantly, the charitable institution will have to face heavy tax burden. At the same time, it is to be noted that ITD doesn't accept such application before close of financial year i.e. application for F.Y. 2017-18 cannot be made on or before 31st March 2018, though there is no such restriction under the Act.	***filed", so that any institution should be well aware of its status before due date of filing its income tax return.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
7.	***Section 10(23FB) - Tax exemption for Alternative Investment Funds – Venture Capital Funds***	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 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". 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). 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	***It is suggested that section 10(23FB) be reworded as follows:*** ***"Any income of a venture capital company or venture capital fund from investment <u>set up to raise funds for investment</u> in a venture capital undertaking."*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
8.	***Section 10(32) - Income of minors - to increase exemption limits***	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.	***It is suggested that this should be raised to at least Rs. 5,000/- for each minor child.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
9.	***Section 12AA – Status of registration application***	If the order for granting or refusal of application for registration of trust or institution u/s. 12A is not passed within 6 months, status of registration cannot be defined. Some judgments pronounced that it will be considered as deemed registration, while some judgments are against this view. To minimize litigation, certain amendment needs to be made in existing provisions.	***It is suggested to insert a proviso to section 12A/12AA such that non-disposal of application for registration u/s. 12A within prescribed period will be considered as deemed registration.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

CHAPTER IV

COMPUTATION OF TOTAL INCOME

PART A-SALARIES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
10.	***Deduction to salaried assesses - Payment for notice period***	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 60 days. 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 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.	***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 (unless reimbursed by the new employer).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
11.	***Section 23(1)(c) – Vacant house property***	Vacant property even if given on rent in the earlier year is being taxed as deemed let out and a notional income is being attributed to such a property.	***The provisions of Section 23(1)(c) need to be elaborated and an explanation inserted to avoid unnecessary***

Sr. No	***Section***	***Issue/Justification***	***Suggestion***
		The increase in the number of self-occupied properties has been increased to two to encourage the real estate industry. However, the restriction on the number of self-occupied properties to two may be relooked and revisited. No prudent business person will invest in a property and not seek a return on his/her investment unless it is being used for self-occupation either when on business or for leisure .It should be the prerogative of the assessee to decide the number of properties he can hold.	***litigation. Even though the section is very clear, the department continues to tax a property that is lying vacant even though it was rented out in the previous year.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART D-PROFIT AND GAINS OF BUSINESS AND PROFESSION
DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
12.	***Section 28(iiia) – Sale of license***	Section 28 provides for income that is chargeable to income tax under the head "profit and gains from business or profession". As per sub-section (iiia) of section 28, profit on sale of license granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 is chargeable to tax under the head "profit and gains from business or profession". It is pertinent to mention that "The Import and Exports Control Act, 1947" as mentioned in section 28(iiia) has been repealed. Further, advance Authorization issued in place of erstwhile advance licenses are not transferable as per the Foreign Trade Policy issued under Foreign Trade (Development and Regulation) Act, 1992.	***Since the Import and exports Control Act, 1947 has been repealed and advance Authorization issued in place of erstwhile advance licenses are not transferable as per the Foreign Trade Policy issued under Foreign Trade (Development and Regulation) Act, 1992, sub-section (iiia) to section 28 be omitted.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
13.	***Section 28(iiid) – Duty Entitlement Pass Book Scheme no more in existence***	Section 28(iiid) provides that any profit on transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall be chargeable to income-tax under the head "Profits and gains of business or profession". However, the aforementioned DEPB scheme was abolished w.e.f 1.10.2011 vide Notification No. 51/2011 – Customs, dated 22.06.2011.	***It is suggested that sub section (iiid) to section 28 be omitted since the Duty Entitlement Pass Book Scheme was abolished w.e.f. 1.10.2011 vide Notification No. 51/2011 – Customs, dated 22.06.2011.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
14.	***Section 28(va) – Taxability of non-compete fees in the hands of payer***	Section 28(va) provides for the taxability of amount received as non-compete fees in the hands of recipient. However, its taxability in the hands of payer is not yet defined and amenable to interpretations. In fact, there are differing	***Considering the differing judgements by various courts on the issue of payment of non-compete fees, it is suggested that***

Sr. No	Section	Issue/Justification	Suggestion
		judgements by different high courts regarding the taxability of non-compete fees in the hands of payer. Both Gujarat High Court (CIT v Ferromatice Milacron India P. Ltd, [2018] 99 taxmann.com 154 (Guj.)) and Bombay High Court (PCIT v Piramal Glass Limited, ITA No. 556 of 2017) had held that non-compete fees are eligible for depreciation thereby treating the payment of such fees as capital asset (an intangible asset). However, Madras High Court (Asianet Communications Ltd, TS-429-HC-2018(MAD)) has held that non-compete fee paid to a director is a deductible revenue expenditure.	***suitable legislative amendment be made clarifying the treatment of such expenditure in the hands of payer.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
15.	***Section 28(via) - Conversion of Stock-in-trade into Capital Asset***	Vide the Finance Act, 2018, as per section 28 of the Act when any stock-in-trade is converted into capital asset, the same will be subject to tax in the following manner i) Business Income: Fair Market value on the date of conversion determined in the prescribed manner less cost of inventory converted into capital asset. ii) Capital Gain: Sale Consideration less Fair Market Value on the date of conversion as determined in the prescribed manner. However, it is silent on when the tax is to be discharged, whether on conversion or on sale of capital asset. Therefore, the difference would be taxable in the Previous Year in which the stock in trade is converted into a capital asset.	***It is suggested to provide deferment of payment of tax on business income from conversion of stock-in-trade to capital asset till the final disposal of such capital asset to avoid hardship of payment of tax on unrealized gain and bring parity with the method adopted on conversion of capital asset into stock-in-trade.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
16.	***Section 32 - Depreciation in case of slump sale***	The proviso to section 32 provides that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks,	***Section 32 may be amended to clarify the legal position as to whether depreciation can be claimed on the***

Sr. No	Section	Issue/Justification	Suggestion
		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 *were used by them*. The following issues may be considered for appropriate amendment in the law : (a) An issue arises 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 considering the proviso to section 32 read with section 170 of the Act. (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. Due to practical and administrative	***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.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
17.	***Section 32AC - Slump Sale and investment allowance***	In order to attract capital investment in private sector, the Government of India introduced a tax incentive by way of inserting a new section 32AC in the Income-tax Act, 1961 vide Finance Act, 2013. Section 32AC provides for an additional deduction (over and above 100% deduction by way of depreciation) of 15% of investments in new plant and machinery by a company engaged in the business of manufacturing of goods. Section 32AC(2) provides that if the new asset (on which investment allowance benefit is availed) is sold or transferred within a period of five years, the amount of deduction claimed in past shall deemed to be income of the tax payer in the year of transfer. Only exception to this is where the asset is transferred in connection with amalgamation or demerger. A number of companies have availed the incentive by way of enhancing their capex (Capital expenditure). Such companies may need to re-organize internally for reasons such as improving efficiency by combining similar business activities or separating unrelated business activities, simplification of the group structure, compliance with regulatory requirements, strategic objectives such as mergers/ acquisition, post-merger integration, expansion, capital raising etc. In certain situations, internal re-organisation by way of merger / demerger may be time consuming, whereas a slump	***To facilitate genuine internal group restructuring, it is suggested that the CBDT may issue clarification or consider recommending amendments in the law to the effect that provisions of section 32AC(2) are not applicable to any transfer of assets including slump sale between a parent and a wholly owned subsidiary which is exempt under section 47.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		sale of the business undertaking within the group would be more efficient and economical. However, non-exclusion of slump sale transactions from the impact of anti-abuse provisions contained in section 32AC(2) could cause undue hardship to the tax payers and impacting genuine internal re-organization. It is to be noted that section 47(iv) does not treat transfer of assets between subsidiary to parent and vice-versa, as transfer subject to meeting certain conditions. Accordingly, if a company transfer its manufacturing undertaking to its wholly owned subsidiary company, it is not treated as a transfer under section 47. Similarly, Section 56(2)(x) exempts transactions covered under clause (iv) and (v) of Section 47 (i.e. transfer of assets between holding-subsidiary companies) from being taxed under section 56(2)(x). The rationale for the amendment as stated in the Memorandum to Finance Bill, 2018 is as under: "Section 47 provides for certain tax neutral transfers. Section 56 also excludes income arising out of certain tax neutral transfers from its ambit. However, the transfers referred to in clause (iv) and clause (v) of section 47 have not been excluded from the scope of section 56. In order to further facilitate the transaction of money or property between a wholly owned subsidiary company and its holding company, it is proposed to amend the section 56 so as to exclude such transfer from its scope." The CBDT while issuing Circular No. 1/2013 dated 17.01.2013 in relation to tax benefit under section 10AA/10A/10B stated that mere change of ownership under a slump sale of business would not affect the entitlement to the tax benefit	

Sr. No	Section	Issue/Justification	Suggestion
		under section 10AA or 10A or 10B. Subjecting slump sale between parent and wholly owned subsidiary and vice-versa to the anti-abuse provisions under section 32AC puts such slump sale on an unequal footing to intra-group mergers, demergers even though there is no abuse of law involved.	
18.	***Section 35AD - Expenditure on Specified Business***	Section 35AD was introduced in the Act for the purposes of enabling a switch from profit linked incentives to investment linked incentives. This was done since profit based incentives were distorting the tax base. Accelerated deductions @ 150% were allowed under Section 35AD of the Act for specified core businesses with effect from A.Y. 2010-11 with a view to creating rural infrastructure. Such incentive should be provided to telecom and allied businesses also that are essential for the growth of the economy. Extension of benefit under section 35AD to telecommunications sector will ensure creation of employment opportunities, greater penetration of telecom services, infrastructure development and easy flow of foreign funds to capital intensive and debt ridden sector. Also, investment based incentives such as above 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.	***It is suggested that the benefit of section 35AD(8) should be extended to telecommunication and allied service companies*** ***In addition to new entities incurring capital expenditure, even existing entities incurring capital expenditure for substantial expansion of their essential core should also be allowed the accelerated deductions as substantial capital infusion is required periodically to sustain their viability.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
19.	***Section 35D - Amount paid for increase in***	Currently, amount paid for increase in authorized capital is not allowed as	***It is suggested that fee paid to Registrar of***

Sr. No	Section	Issue/Justification	Suggestion
	authorized capital	deduction. After a company is incorporated with a minimum paid up capital (for which there is no minimum limit now), and it wishes to increase its authorised capital, the company is required to pay registration fee to Registrar of Companies. Fee on incorporation of a company is allowed as per specified limits in 5 installments u/s 35D, however amount paid for increase in authorized capital is not allowed as deduction at all, though the amount is paid to government as a fee.	***companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal installments u/s 35D.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
20.	***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 contributions collected by the employer are credited to the respective fund within the due date specified under the relevant legislation of the fund. 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. 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. It may be noted that the statutory laws under the respective contribution schemes	***It is suggested that the due date defined under Explanation to Section 36(1)(va) should 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 Employer's contribution under Section 43B of the Act.*** ***It may also be kept in mind that delay of few days should not debar to claim the actual expenditure under Income-tax law as due interest is already charged under relevant laws.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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. On the subject there have various conflicting judgments. Where Hon'ble Uttarakhand High Court and Hon'ble Delhi High Court have considered the due date under section 36(1)(va) to be read in sync with the due date mentioned in section 43B, Hon'ble Gujarat High Court has given a different view. 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.	
21.	***Section 37 – Corporate Social Responsibility expenditure***	The Finance (No. 2) Act, 2014 had added a new Explanation 2 in sub-section (1) of Section 37 providing that any expenditure incurred by an assessee on the activities relating to CSR referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession and deduction shall not be allowed. As per the Companies Act 2013, it is mandatory for specified companies (as per Section 135) to spend 2% of their average profits towards Corporate Social Responsibility. The CSR expenditure incurred by a company will specifically be treated as for non-business purpose hence will be disallowed other than those covered u/s. 30 to 36 of the Act.	***These expenses are all connected to social and charitable causes and not for any personal benefit or gain. It is, therefore, fair to allow the same as business expenditure. There is no bar on allowability of CSR expenditure falling under other sections like 35, 35AC etc. There is a strong need to revisit this provision and the companies should be allowed 100 per cent deduction of CSR .*** ***In fact, ideally there should be no bar on allowability of CSR expenditure under the Act.***

Sr. No	Section	Issue/Justification	Suggestion
			(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
22.	***Section 40(b)(v) – Raise in allowable expenses in the form of remuneration to working partner***	Currently, the remuneration to working partners is allowed at Rs. 1,50,000 or 90 percent of book profits whichever is more for first Rs. 3,00,000 of book profits and at 60 percent of remaining book profits which is not justified. Raising the aforesaid limit will have no tax effect as it would be just appropriation of profits. Further, there would be timing difference from the view point of tax.	***It is suggested that limit for allowable remuneration for each of the working partner be changed at the rate of Rs. 1,80,000 per annum per partner or 90 percent of book profits whichever is more for first Rs. 10,00,000 of book profits and 75 percent of the remaining book profits.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
23.	***Explanation 5 to Section 43(1) – "building" to be replaced by "assets"***	Section 43 deals with actual cost. There are 14 explanations provided in section 43(1) describing the method of computation of actual cost of 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. 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.	***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 Explanation 5 to section 43(1).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
24.	***Section 44AD - Presumptive Income – Some Issues***	Section 44AD was repealed w.e.f. 01/04/2011 i.e. from AY 2011-12. According to the new 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, agency business, commission / brokerage income business and whose total turnover or gross receipts in the previous year does not exceed an amount of Rs. 2crore. It was further amended by the Finance Act, 2016. **Applicability of section 44AD** 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. 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.	***It is suggested that instead of sub-section 44AD(6), the definition of "eligible business" be amended to exclude 'specified professionals', agency business and business in respect of which the earnings are in the form of commission or brokerage.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
25.	***Benefit of presumptive taxation to LLP - Section 44AD***	Section 44AD relating to presumptive taxation applies only to businesses run by residents Individual, HUF and Firms excluding LLP. Tax on presumptive basis should be	***The benefit of section 44AD should also be made available to LLP.*** ***(SUGGESTION FOR IMPROVING TAX***

Sr. No	Section	Issue/Justification	Suggestion
		extended to all assessees, including a LLP. Only section 44AD excludes LLP, for which there appears to be no cogent reason. Otherwise under the Act, a LLP and a Firm are treated at par.	***COLLECTION)***
26.	***Section 44ADA - Special provision for computing profits and gains of profession on presumptive basis – Issues and concerns arising there from to be addressed***	The Finance Act, 2016 has inserted a new section 44ADA providing for special provision for computing profits and gains of profession on presumptive basis. This measure would definitely help the specified professionals in payment as well as compliances under the income-tax law.	
	a) Threshold limit of Rs 50 lakhs may be increased	The sub-section (1) provides that: "Notwithstanding anything contained in sections 28 to 43C, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent. of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession". The threshold limit of Rs 50 lakhs appears to be low. Consequently, this provision may not achieve the intended objective of providing relief to professionals in the small and medium segment. Even the Income Tax Simplification Committee headed by Justice R V Easwar recommended a threshold limit of Rs 1	***It is suggested that the threshold limit of Rs 50 lakh may be raised appropriately (say to at least Rs 1 crore) so that a sizable percentage of professionals in the small and medium segment are covered under the said provisions; which would ultimately lead to the achievement of stated objective of introducing the new provision.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		crore. This appears to be a more justifiable limit considering the present economic conditions prevailing in the country.	
	b) Rate of estimated tax @ 50% too high	The rate of 50% appears to be on the higher side and may cause very high tax incidence on such professionals particularly since the scheme is intended to cover professionals with low gross receipts/total turnover resulting in low margins due to nature of work and high competition. This high rate may cause a lot of professionals not to opt for this scheme thereby defeating the ultimate objective of introducing this provision. Considering the above reasons, the profit @ 50% is difficult to achieve specially for intended professionals with low gross receipts/total turnover. Also, the Income Tax Simplification Committee headed by Justice R V Easwar has recommended the rate of 33.33% of the receipts as the income from profession.	***It is suggested that the estimated rate of income @ 50% of the total gross receipts may be reduced appropriately (say to 30%) considering the high cost of providing the services by specified professionals specially the small tax payers having income from profession.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART E-CAPITAL GAINS

Sr. No	Section	Issue/Justification	Suggestion
27.	***Limited Liability Partnership (LLP) -*** ***(a) Section 47 – Insertion of clause (viab) to provide exemption in respect of transfer of capital asset consequent to amalgamation of foreign companies - Consequent exemption to be provided in respect of transfer of shares by resident shareholders***	Clause (viab) is inserted in section 47 so as to provide exemption in respect of any transfer in a scheme of amalgamation, of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company. However, no clause has been inserted to provide consequent exemption in respect of transfer of shares by the resident shareholders of amalgamating foreign company in consideration of allotment of shares of amalgamated foreign company. This appears to be an inadvertent omission, since in case of exemption under section 47(vi) in respect of transfer of capital asset in a scheme of amalgamation by an amalgamating company to the amalgamated company, where the amalgamated company is an Indian company, consequent exemption has been provided under section 47(vii) in the hands of the shareholders of the amalgamating company for transfer of shares of amalgamating company in consideration of allotment of shares of amalgamated company.	***New clauses may be inserted in section 47 to provide for:*** ***(i) Consequent exemption in respect of transfer of shares by the resident shareholders of the amalgamating foreign company if transfer is made in consideration of the allotment to him of any shares or shares in the amalgamated foreign company.*** ***(ii) exemption in respect of transfer in a scheme of business re-organisation of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		Further, transfer in a scheme of business reorganization of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company should also be exempt under section 47. Business reorganization may be defined to mean the reorganization of business, otherwise than by way of amalgamation or demerger of foreign companies.	
	(b) Consequential amendment required in section 47(xiiib)	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 preceding years exceed Rs. 60 lakhs. Since this was an amendment 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.	***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 under section 47(xiiib) or alternatively, the limit of sixty Lacs rupees should be substantially enhanced or the condition of the turnover should be deleted.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(c) Section 47(xiiib) - Conversion of company into LLP – Clarification	LLP is a preferred form of organization for smooth conduct of business. Accordingly, section 47(xiiib) provides for an exemption enabling smooth conversion, subject to	***1. In view of the aforesaid, it is suggested that the condition of asset base being less than Rs. 5 crores be rationalized and may be increased to Rs 10 crore.***

Sr. No	Section	Issue/Justification	Suggestion
	required relating to additional condition	compliance with the conditions. There was a case for making the exemption more liberal by relaxing the turnover limit which is one of the present conditions. However, conversion will become all the more difficult as a result of an additional condition which will deny exemption in a case where the company was possessed of total assets worth Rs. 5 crores in any of the 3 years. The expression "value of total assets appearing in the books of accounts" is not defined and may create certain interpretational issues such as whether status of assets is to be seen on balance sheet date or even one day's presence during the year will be considered if asset no longer exists with the assessee as on balance sheet date. Also, whether 'Miscellaneous Expense' as an item reflected on balance sheet will constitute an asset, treatment of advance tax paid shown on asset side (with corresponding provisions for tax on liability side), etc. are the other issues which need to be addressed.	***2. Also, the scope of the term 'value of total assets as appearing in the books of accounts' be clarified to provide certainty and reduce litigation.*** ***3. Another alternative that could be considered is that on conversion, the assessee pays tax @ 15% subject to compliance of only sub-clauses (a), (b) and (c).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
28.	***Sections 47(x) & (xa) and 49(2A) - Capital Gain on Conversion of Foreign Currency Exchangeable Bonds (FCEB)***	Section 47 (xa) read with Section 49(2A) effectively provide that conversion of FCEB in to shares of any company will not give rise to capital gain and for the purpose of computing capital gain arising on sale of such shares at subsequent stage, cost of acquisition shall be taken as the relevant part of cost	***It is suggested that appropriate amendment should be made in Section 2(42A) to provide that holding period of such shares should be taken from the date of acquisition of FCEB/debentures/ other bonds and not from the date of allotment of shares.***

Sr. No	Section	Issue/Justification	Suggestion
	and other Bonds & Debentures	of FCEB. There is no corresponding provision for taking holding period of the shares from the day of acquisition of the Bonds [FCEB]. Similar difficulty exists in case of conversion of debentures and other bonds in to shares for which also similar provision exists in Section 47(x).	***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
29.	***Section 54EC - Time Limit for investment in specified bonds***	a) Time limit for investment in specified bonds is presently 6 months from the date of transfer. 1. In many cases, assessee is not aware about exemption provision and comes to know about it only when he approaches his/her tax consultant at the time of filling of ITR. By this time, 6 months period is already over and thus the assessee inadvertently lose the benefit of exemption. 2. Present time limit expires exactly at 6 months from the date of transfer. Due to this, even an otherwise knowledgeable assessee is also forced to be very cautious about exact date and sometimes he may miss it unintentionally. 3. Bringing the time limit upto the due date of filling of ITR shall also bring parity with section 54/54B/54F etc. where assessee is permitted to deposit the money in Capital Gains Account upto the due date of filing of ITR. In fact, assessee would be in a better position to take a call as to which exemption option is better suited for him. 4. In number of transactions, there is some difference in dates	***a) It is suggested to amend section 54EC so that time limit for investment in specified bonds may be allowed upto the due date of filing of ITR.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		of actual handing over of possession, submission of documents for registration of transfer, actual date of registration and even a subsequent modification of registered document due to demand of additional stamp duty. All these dates, though may fall in the same year but still may differ from each other, creating an unnecessary dispute regarding actual date of transfer and thereby time limit of 6 months. (Case of Anil Dulichand Jain V. ACIT, ITAT Mumbai ITA No. 4922/MUM/2016 is a good example of this). If the date of investment in specified bonds is made upto the due date of filling of ITR, such disputes can be saved.	
		(b) Capital gains exemption on investment in Specified Bonds during the financial year In furtherance of the existing proviso to section 54EC, a new proviso has been inserted to clarify that the investment made by an assessee in the long-term specified asset, from capital gains arising from ***transfer of one or more original assets***, during the financial year in which ***the original asset or assets*** are transferred and in the subsequent financial year does not exceed fifty lakh rupees. The change is proposed to plug the revenue leakage and to clarify the real intent of the law. Since, the new proviso is in furtherance of the existing proviso; it may cause hardship in genuine cases where investment has to be made	***(b) Considering the fact that the new proviso takes care of the true intent of the law, and appears to be contrary to the existing proviso, thereby causing hardship to the genuine taxpayers, it is suggested that the act be amended to substitute the first proviso with the newly inserted proviso.*** ***Further, 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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		in long term specified asset in respect of two previous years in a single financial year. For example, an assessee selling a long-term capital asset in February, 2015 (Previous year 2014-15) may invest in Section 54EC assets either in 2014-15 or 2015-16 (upto August,2015). However, in respect of any long-term capital asset sold by him in the year 2015-16, he will not be able to invest in 54EC bonds since exemption will be available to him due to applicability of first proviso to section 54EC.	
30.	***Section 55(2)(ac) – Clarification required to determine the cost of acquisition in case of Merger/Demerger etc.***	**Background:** The Finance Act, 2018 has introduced section 55(2)(ac) which states that cost of acquisition in relation to a long term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of business trust for the purpose of calculating tax payable u/s 112A shall be as under: Cost of acquisition for the assets acquired before 1st February 2018, shall be higher of the following: (i) The actual cost of acquisition of such asset, and (ii) The lower of: (a) the fair market value of such assets as on 31st January 2018; and (b) the full value of consideration received or accruing as a result of the transfer of the capital	***It is suggested to bring clarity in determining the cost of acquisition in case of merger/demerger etc. u/s 55(2)(ac) by amending the said section or by issue of a clarification.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		asset. Fair market value should be calculated in following manner– Fair market value for capital assets listed on recognized stock exchange as on 31st January 2018 shall be (i) Fair market value shall be the highest price of the capital asset quoted on any stock exchange in India on 31st January 2018. (ii) Fair market value in case if there is no trading of the capital asset on 31st January 2018 will be highest price of the capital asset quoted on date immediately preceding 31st January 2018 when the asset was last traded. (iii) Fair market value of a capital assets being a unit which is not listed on a recognized stock exchange as on 31st January 2018 shall be net asset value of the capital asset as on 31st January 2018. (iv) Fair market value in other case shall be – In case of equity share which are not listed on the stock exchange as on 31st January, 2018, however, the same has been listed on stock exchange on the date of transfer – Fair market value in such case shall be an amount which bears to the cost of acquisition the same proportion as cost inflation index for the F.Y. 2017-18 bears to the cost inflation index for the first year in which the asset was held	

Sr. No	Section	Issue/Justification	Suggestion
		or for the year beginning on 1st April, 2001, whichever is later. This aforesaid provision requires clarification in computation of cost of acquisition when there is a merger/ demerger etc. **Issues:** (i) *Merger:* A shareholder Mr A has purchased 10 shares of X Ltd (listed co.) on 01st January 2017 at Rs. 100 each. Later, on 1st June 2018 X Ltd merges with Y Ltd (listed co.) and Mr A gets the shares of Y Ltd against his investment in X Ltd. Mr. A further sells the shares of Y Ltd on 31st July 2019. This section is applicable only when the capital asset is acquired before 01st February 2018. Since the holding period of X Ltd is added for determining LTCG/STCG, Shares of Y Ltd should be deemed to be acquired before 01st February 2018 and the fair value of shares of X Ltd on 31st January 2018 should be considered for the purpose of determining the cost of acquisition of shares of Y Ltd u/s 55(2)(ac). Now the question arises how to determine the fair value as on 31st January 2018 - When both the companies are listed. To determine the fair value of equity share, we may refer to the highest price of shares of X Ltd or Y Ltd as on 31st January 2018. There is no clarity in section 55(2)(ac) and therefore, it	

Sr. No	Section	Issue/Justification	Suggestion
		needs to be amended to provide that fair value of shares of X Ltd on 31st January 2018 be treated as cost of acquisition of shares of Y Ltd. *(ii) Demerger*: A shareholder Mr. A has purchased 10 shares of X Ltd on 01st January 2017 at Rs. 100 each. Later, on 1st June 2018 Retail division of X Ltd demerges from X Ltd and is transferred to Y Ltd. Mr. A continues to hold the shares of X Ltd and he also gets the shares of Y Ltd in the ratio of no of shares held by him in X Ltd . Mr. A further sells the shares of X Ltd and Y Ltd on 31st July 2019. In order to determine the Gain/ Loss on sale of shares, we would be required to compute the cost of acquisition of shares under section 55(2)(ac). These provisions does not provide clarity of valuation on shares on demerger. Section 55(2)(ac) may need to be amended by clarifying that on demerger the share price of X Ltd (Listed co) is to be determined as on 31st January 2018 by taking highest price as on 31st January 2018. The said price shall be further divided in the ratio of networth in X Ltd after demerger and the networth transferred to Y Ltd. Eg. In case the highest price of shares of X Ltd as on 31st January 2018 is 120. And in case 20% of the net-worth is transferred to Y ltd. Then 120 x 80% = 96 shall be cost of	

Sr. No	Section	Issue/Justification	Suggestion
		acquisition as per section 55(2)(ac) for shares of X Ltd and 120 minus 96 = 24 shall be the cost of acquisition of share price of Y Ltd as on 31st January 2018.	
31.	***Reference to the Valuation Officer - Section 55A***	This section empowers the assessing officer to refer the matter to the valuation officer for the purposes of ascertaining the fair market value of the capital asset. Under clause (a), the power has been given to the valuation officer to refer the matter, where the value of the asset has been claimed by the assessee in accordance with the estimate made by the registered valuer and the assessing officer is of the opinion that the value is in variance with its fair market value. The variance has not been defined by the board and hence it is creating lot of difficulties to the assesses as even in case of minor variation, the matters are getting referred to the valuation officer. Further under clause (b), the assessing officer can refer the matter where he is of the opinion that the fair market value of the asset exceeds the value claimed by the assessee by more than such percentage of the value of the asset or by more than such amount as may be prescribed.	***It is suggested that the meaning of variance under clause (a) be defined and given a reasonable tolerance limit. If the variance is within such limits, matter should not be referred to the valuation officer.*** ***Further, section 55A(b)(i) may be amended as follows:*** ***"(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee <u>AND HIGHER OF</u> by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf ; or"*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART F-INCOME FROM OTHER SOURCES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
32.	***Definition of the term relative - Explanation to Section 56(2) (vii)***	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. 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. 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. Further, it may be noted that, in relation to an "individual", the term relative, as it stands at present, 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.	***Suggestions:*** ***(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.*** ***(ii) 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). Also, maternal grandparents may be included in the definition of relatives.*** ***(iii) The application of the provision should also be extended to the relatives of the members of HUF.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
33.	***Section 56(2)(x) – Clarification w.r.t. issue of shares***	As per the Section 56(2)(x), if any person receives any property on or after 1 April 2017, without consideration or for consideration which is less than the aggregate fair market value by an amount exceeding Rs 50,000, the difference shall be taxable under the head 'Income from	***A suitable clarification may be issued that section 56(2)(x) is applicable only for transfer of shares and not for issue of shares.***

Sr. No	Section	Issue/Justification	Suggestion
		Other Sources' in the hands of the recipient. The intent of legislation is to bring within ambit of taxation instances of 'transfer' for inadequate consideration and not 'issue' of shares. This section has replaced the erstwhile section 56(2)(viia) which was applicable only for transfer of shares as was mentioned in Explanatory Memorandum to Finance Bill, 2010.	***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
34.	***Section 56(2)(x) – Certain exceptions to be provided w.r.t. conversion***	Section 56(2)(x) contains provisions related to charging of income to tax where a person receives any money, immovable property or property other than immovable property without consideration or with inadequate consideration. 4th Proviso to section 56(2)(x) provides the cases to which this clause would not apply. Sub-clause (IX) to 4th Proviso to section 56(2)(x) provides certain transactions not regarded as transfer to which this section would not be applicable. Certain transactions, seems to be missed out even though covered u/s 47 specially related to conversions, where even though they are not regarded as transfer and Capital Gain would not be attracted but if, it includes Immovable Property or property other than immovable property (eg shares), they could be covered u/s 56(2)(x). These include: - Clause (xiii) – conversion of firm into company - Clause (xiiib) – conversion of company into LLP - Clause (xiv) – conversion of sole proprietorship into company	***It is suggested that sub-clause (IX) of 4th Proviso to section 56(2)(x) may be amended to include following clauses of section 47*** • ***(xiii)*** • ***(xiiib)*** • ***(xiv)*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
35.	***Section 71(3A) - Loss from House Property***	Section 71 of the Act provides for set off of any loss arising under the head "Income from House Property" against any other head of income. As per section 71, it is restricted to set off the losses to the extent of Rs 2,00,000 against any other head of income and the unabsorbed loss to be carried forward upto subsequent 8 assessment years. Middle class and lower class people generally invest in property by obtaining loan from the banks. The amount of interest paid is always higher than the rental income earned against such property and as per the current provisions the loss could be set off against other income. This has always been a motivator to invest in the real estate. The amendment will hit the salaried class badly since many salaried class have real estate as one of the dominant asset class in the portfolio. Many of them have borrowed to acquire a house which is self-occupied. Further, the Finance Minister in his budget speech focused on housing development. The restriction of set off of loss will not promote development of housing projects. The carry forward of the unabsorbed loss under Income from house Property is allowed for a period of 8 assessment years. However, practically there would not be any positive income since the interest cost is very high.	***It is therefore suggested to withdraw the said amendment. Alternatively, the limit of Rs 2 lakhs may be raised to atleast Rs 5 lakhs.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
36.	***Section 72A - Carry forward of losses in case of amalgamation or merger for***	Currently, all industrial undertakings in the Manufacturing, Software, Electricity, Telecom, etc. sectors are allowed to carry forward of losses in case of merger / amalgamation. Service industry undertakings in general	***It is suggested to amend Section 72A(7)(aa) to also include Broadcasting, Media and Entertainment sector.*** ***(SUGGESTION FOR RATIONALIZATION OF THE***

Sr. No	Section	Issue/Justification	Suggestion
	service industry	are not allowed such carry forward with the exception of Software and Telecom services. Media and Entertainment Industry requires huge investments in digitization, technology set up and distribution network. Seeking level playing field with other services like Telecom, Software etc. As per the Notification issued by the Govt. in 2004, Broadcasting and Cable Services are a part of Telecommunication Services. Consolidation of media industry will help in rapid growth and generation of substantial employment opportunities and faster digitization.	***PROVISIONS OF DIRECT TAX LAWS)***
37.	***Section 78 – Issue of carry forward and set off of losses of an LLP***	Currently, a firm assessee is not allowed to carry forward and set-off its losses to the extent of the share of the partner who has retired/ resigned as a partner. This is so, as firm and partners are treated as same under the civil law and a firm does not have a separate legal entity, unlike a company being a body corporate. Under Income Tax, firm is a separate person and it includes an LLP. LLP is a body corporate under LLP Act, 2008 and has separate legal entity and perpetual succession. An LLP may have 100 or 1000 partners, as there is no limit on maximum number of partners under LLP. Being a body corporate like company, an LLP having separate legal entity, the carry forward of losses and set-off should not be similar to a firm but should be similar to a company.	***It is suggested that section 78 and 79 may be suitably amended to allow / restrict carry forward of losses and set-off of an LLP assessee under section 79 and not as per section 78.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
38.	***Section 79 –*** ***(a) Carry forward and set off of loss in***	The Finance Act, 2017 amended section 79 to provide that where a change in shareholding has taken place in a previous year in the case of a company, not being a	***It is, therefore, suggested that the condition of continuous holding of the promoters/investors (being***

Sr. No	Section	Issue/Justification	Suggestion
	case of eligible start-ups - Condition to be further relaxed	company in which the public are substantially interested and being an eligible start-up as referred to in section 80-IAC of the Act, loss shall be carried forward and set off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred during the period of 7 years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year. Similar position remains even after the substitution of section 79 vide the Finance (No. 2) Act, 2019. The existing provisions provide for restrictions on carry forward of losses in case of substantial change in shareholding of the Indian company. As per the current provisions, shareholders of the company at the end of the financial year in which the loss was incurred must continue to own at least 51% of the shares in that company in the year in which such carry forward loss is to be set off; otherwise, the company loses the ability to carry forward such loss. The Government, in pursuance of the start-up action plan and facilitating ease of doing business, introduced a beneficial regime for start-up to carry forward and set off losses. It has been provided that as long as all the original shareholders of the Company at the end of the financial year in which the loss was incurred continue to be shareholders of such shares in the financial year in which the loss is to be set off, the benefit of carry forward of loss would be available. Another issue is on account of turnover condition specified in Explanation (ii)(b) of	***persons holding shares in the year of loss) be relaxed. Inter-se transfers between such shareholders be permitted. Also, it should suffice that the group of promoters/investors hold upto 26% of the voting power in the year of set-off. In any case, the turnover condition for a company to be an 'eligible start up' may be omitted in Explanation (ii)(b) to section 80-IAC.*** ***Also, the period for carry forward and set-off of losses can be extended based on period of gestation in the particular industry instead of initial period of 7 years.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		section 80-IAC for a company to qualify as 'eligible start up'. The condition is that turnover of such company should not exceed Rs. 25 Crore anytime between F.Y. 2016-17 to F.Y. 2020-21. This condition also creates uncertainty for startups in the matter of section 79 limitation as generally applicable to closely held companies i.e., whether the turnover limit has to be adhered to in the year of set-off as well. The condition of continuing to hold all shares appears to be applicable not only to the initial promoters but also all persons investing subsequently in the startup, which may cause genuine practical hardship. This may also be practically difficult for the start-up company to achieve since PE investors generally look at time frame of 3 to 5 years for exit at a higher price. The exit may happen either through secondary sale in subsequent round of PE funding or through IPO. Any such exit will trigger section 79 limitation for the start-up company.	
	(b) Insertion of third proviso in Section 79 - relief for change in shareholding of subsidiaries pursuant to resolution plan	Section 79 of the Income-tax Act,1961 restricts the carry forward and set off of losses in the hands of a closely held company, if the shares carrying more than 51% of voting power of such company are not beneficially held by persons who beneficially held such shares on the last day of the previous year in which such loss was incurred. In general, implementation of resolution plan in respect of a company undergoing resolution process may involve either issue of additional shares or other restructuring exercise resulting in change in the shareholding of such company beyond the permissible limit u/s 79. In addition, thereto, the company may also	***It is suggested that section 79(2)(c) be amended to clarify that it applies both to the company undergoing resolution process as well as its subsidiaries. The provision may be modified as follows:*** ***"Provided also that nothing contained in this section shall apply to a company <u>as well as its subsidiary</u> where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the***

Sr. No	Section	Issue/Justification	Suggestion
		be required to hive off its investments in subsidiaries by selling its stake to interested investors. This may result in change in shareholding of the subsidiaries triggering consequences u/s 79 of the Income-tax Act, 1961 in the hands of subsidiaries as well. Hence, this may discourage the interested acquirers/bidders from making investments in loss making subsidiaries and also in offering higher bids. Finance Act 2018 has amended the provisions of section 79 by inserting third proviso to section 79, to state that section 79 will not apply to companies, where the change in the shareholding is pursuant to implementation of a resolution plan approved by adjudicating authority (AA). This benefit is to be provided after an opportunity of being heard is given to the jurisdictional Commissioner or Principal Commissioner. Similar position remains even after the substitution of section 79 vide the Finance (No. 2) Act, 2019. **Issue:** Thus, in terms of the third proviso to section 79, carry forward and set off of losses of a company undergoing insolvency resolution process as well as its subsidiaries will not be impacted by section 79, if the change in shareholding takes place pursuant to a resolution plan approved by AA. While such be the case, it is likely that NCLT will not hear Principal Commissioner/Commissioner holding jurisdiction over the subsidiaries. Hence, the reference to an opportunity of being heard to be given to the Principle Commissioner/Commissioner by AAs may	***Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner <u>holding jurisdiction over the applicant</u>".*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	***Section***	***Issue/Justification***	***Suggestion***
		raise a doubt that the third proviso to section 79 only refers to the company which is undergoing a resolution process under IBC.	
39.	***Section 79 - Carry forward and set-off of losses in certain cases***	In a recent decision, the Karnataka High Court (in the case of AMCO Power Systems Ltd.) held that the term beneficial shareholding as used in section 79 would apply to the ultimate holding company as well, and not be restricted to the immediate shareholding.	***It is suggested that it be clarified that whether section 79 would apply only to a change of more than 51% in the immediate holding company, or whether it would also apply in the case of a change in the ultimate holding company.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

CHAPTER VIA

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME

PART B-
DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
40.	***Section 80-IBA – Need to prescribe a form/certificate***	Under section 80-IBA, inserted by the Finance Act, 2016 from 1.4.2017, deduction of 100% of profits derived from development of affordable housing projects approved on or after 1st June 2016 is available, subject to fulfillment of specified conditions. It prescribes multiple conditions to be fulfilled by assessee in order to claim deduction under this section. However, no monitoring mechanism has been prescribed to determine the correctness of claims made by the concerned assessees. This may ultimately lead to leakage of revenue.	***It is suggested that a monitoring mechanism i.e. a form may be prescribed under section 80-IBA to be certified by an Accountant so that assessees claiming deduction under this section may be checked for correctness of claims made as well as fulfilment of conditions prescribed i.e form to be prescribed to be incorporated in the section itself.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
41.	***Section 80C –*** **Various suggestions**	PPF is used as a means of savings by entrepreneurs and professionals. While the assessees in employment have the compulsion of saving 12% of their salary (with matching contribution from employers), the only safe and tax efficient saving option available for self-employed assessees is PPF. Hence, the suggestion to increase the ceiling of PPF contribution to Rs.3 lakhs. This may also boost the domestic savings as a percentage of GDP and will have an anti-inflationary impact. Further, the present limit of INR. 1,50,000 has not been increased for several years and requires reconsideration. The revised	***It is suggested that:*** ***a) the annual limit for contribution to PPF be increased to Rs. 3 lakhs from the present ceiling of Rs. 1.5 lakhs.*** ***b) the maximum limit for deduction under section 80CCF may be increased from Rs.1.5 lakhs to Rs.3 lakhs.*** ***c) full deduction for health insurance premium paid u/s.80D may be allowed and not to tag it with deduction for medical expense. Apart from deduction for health insurance premium, a separate deduction for medical expenses incurred should be made available. The justification for such separate deduction is***

Sr. No	Section	Issue/Justification	Suggestion
		monetary limit will help in increasing the savings of individuals and is necessary keeping in view the rate of inflation.	***lack of social security cover and the inability of public health sector to cater to the needs of the tax payers by providing efficient hygienic and timely medical treatment.*** ***d) the limit for deduction under section 80DDB for expenses incurred on treatment of certain chronic diseases may be increased.*** ***As per section 80CCC, if any contribution is made by the assessee to a pension fund and deduction is claimed under that section, all withdrawals from the scheme by the assessee (including the principal amount) ARE SUBJECTED TO TAX. This is causing hardship in respect of those assessees who have simply made contributions to this scheme and have not claimed any deductions. Hence, the suggestion to amend this section to the effect that in cases where deduction is not claimed under this section, only the appreciation component of the investment will be subjected to tax. Even if deduction is claimed, only the amount of deduction claimed should be added to the income at the time of withdrawal from the scheme and not the entire maturity proceeds. Of course, any appreciation over the principal invested can also be taxed as capital gain.*** ***(e) The quantum of deduction under section 80C be increased from Rs 1,50,000 to Rs 2,50,000 to***

Sr. No	Section	Issue/Justification	Suggestion
			provide savings opportunities to public at large. ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
42.	***Section 80EEA - Tax incentive for affordable housing***	In order to promote affordable housing, the Finance (No. 2) Act, 2019 has introduced a new section 80EEA so as to provide an additional deduction of up to Rs 1,50,000/- for interest paid on loans borrowed up to 31.03.2020 for purchase of an affordable house valued up to Rs 45 lakh. **Issue I**: **Request to provide benefit to assessees whose loan were sanctioned after section 80EE deduction was not available i.e. 01.04.2017 and onwards** One of the conditions required to avail the benefit of section 80EEA is that the loan has been sanctioned by a financial institution during the period beginning on 01.04.2019 to 31.03.2020. Further, benefit of section 80EEA is available to assessee, being an individual not eligible to claim deduction under section 80EE. Here, it is pertinent to mention that benefit of section 80EE was available to assessees whose loan had been sanctioned by the financial institution during the period beginning on 01.04.2016 and ending on 31.03.2017. Accordingly, there are hundreds of	***(i) Considering the fact that no additional deduction was available for loans sanctioned during the period 01.04.2017 to 31.03.2019 taken by eligible assessees for purchasing residential house property and satisfying conditions as mentioned in section 80EE/80EEA, it is suggested to make the following change in section 80EEA(3)(i):*** ***" (i) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, ~~2019~~2017 and ending on the 31st day of March, 2020;"*** ***(ii) Accordingly, it is suggested that section 80EEA(1) may be amended as follows (by inserting the words 'or construction' akin to provisions of section 54 and 54F):*** ***"(1) In computing the total income of an assessee, being an individual not eligible to claim deduction under section 80EE, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition*** OR CONSTRUCTION ***of a residential***

Sr. No	Section	Issue/Justification	Suggestion
		assessees who may have loan sanctioned after 01.04.2017 but before 31.03.2019 for purchasing a residential house property and fulfilling other conditions as laid down in section 80EE/ section 80EEA. Such assessees did not get any income tax benefit in the absence of such a provision in income tax law during such period. In order to truly realize the goal of the current Government of 'Housing for All' and 'affordable housing', it may be considered that the provision of section 80EEA pertaining to period of sanctioning of loan may be taken from 01.04.2017 instead of 01.04.2019 i.e. the period when deduction under section 80EE was not available. **Issue II:** **Clarity regarding benefit to be available for loan taken for construction of residential house property as well** Section 80EEA(1) reads as under: "(1) In computing the total income of an assessee, being an individual not eligible to claim deduction under section 80EE, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of ***<u>acquisition of a residential house property</u>***." [Emphasis supplied]	***house property."***

Sr. No	Section	Issue/Justification	Suggestion
		In this regard, Memorandum explaining the Finance Bill provides as follows: "In order to provide an impetus to the 'Housing for all' objective of the Government and to enable the home buyer to have low-cost funds at his disposal, it is proposed to insert a new section 80EEA in the Act so as to provide a deduction in respect of interest up to one lakh fifty thousand rupees ***on loan taken for residential house property*** from any financial institution subject to the following conditions:" [Emphasis supplied] As can be seen from above, Section 80EEA(1) uses the wordings "acquisition of a residential house property" whereas in the Memorandum explaining the Finance Bill, the term used is "loan taken for residential house property". In the larger interest of small tax payers, the wordings in the section 80EEA(1) may be modified from "acquisition of a residential house property" to "acquisition or construction of residential property". There may be a case where assessee owns a land and desires to construct a house and loan is taken for construction of that house. In the absence of clarity, there may be litigations/issues on plain interpretation of language used in the section 80EEA(1) w.r.t. availability of benefit on interest payable on loan taken for construction of residential house property. It is pertinent to mention	***(iii) In view of aforesaid, it is suggested that limit of Rs 45 lakh as the value of residential house property may be raised appropriately. (say to Rs 55 lakhs). Further, akin to section 80EE, section 80EEA(3)(ii) may be amended to do away with the term 'stamp duty value'. In other words, the following change may be made in section 80EEA(3)(ii):*** ***"(ii) the ~~stamp duty~~ value of residential house property does not exceed ~~forty-five~~*** fifty-five ***lakh rupees;"***

Sr. No	Section	Issue/Justification	Suggestion
		here that section 54 and 54F quite clearly uses the term 'construction' along with the term 'purchase' of a residential house property. **Issue III:** **Request to raise the value of residential house property from Rs 45 lakhs to a reasonable amount so that additional deduction of Rs 1.5 lakh may be claimed** In order to avail the benefit of this section, one of the conditions prescribed is that the stamp duty value of residential house property does not exceed Rs 45 lakhs. Let's take a case where the actual cost of acquisition of residential house property on which loan is taken from Financial Institution (FI) is Rs.40.00 lakh. Normally, FI finances 75% to 80% of cost of property. In the given case, the loan amount would be say approx. Rs.30.00 lakh. As per the prevailing rate of interest on housing finance (presuming it to be under 9%), interest even in the first year would not be more than Rs. 3.00 lakh. If assessee consumes interest of Rs. 2.00 lakh under section 24(b), the maximum limit/benefit in the section remains unutilized. Under such circumstances, in order to pass on the real benefit of Rs. 1.50 lakh additional deduction, the limit of Rs.45.00 lakh may reasonably be modified. It may be noted that even	

Sr. No	Section	Issue/Justification	Suggestion
		otherwise, limit of allowable interest u/s section 80EE (though applicable for loan sanctioned during the financial year 2016-17) is increased from Rs. 50,000/- to Rs. 1,50,000/-, corresponding limit of value of residential property is reduced from Rs. 50 lakh to Rs.45 lakh which seems to be unjustifiable. Further, instead of stamp duty value as used in section 80EEA(3)(ii), it should be actual acquisition cost or cost of construction as stamp duty value in many circumstances is much more than actual value. To quote an example, if the layout is on main road and it has few flats on main road and some are on fifth or sixth lane. The stamp duty valuation of entire layout is same whereas actual valuation may differ because of so many circumstances such as house is having two roads; it is near garden of society, floor location etc. Also, section 80EE refers to the 'value of residential house property' and not 'stamp duty value'.	
		Issue IV: **Condition of not owning any residential house not in line with the provisions of section 54 and 23** One of the conditions to avail benefit of section 80EEA is that the assessee does not own any residential house property on the date of sanction of loan. It implies that house property for which loan	***(iv) It is suggested that section 80EEA(3)(iii) may be appropriately amended so as to make it in line with the provisions of section 23 and 54 i.e following change may be made:*** ***"(iii) the assessee does not own ~~any~~ <u>more than one</u> residential house property on the date of sanction of loan."*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND***

Sr. No	Section	Issue/Justification	Suggestion
		is taken should be the first house property of the assessee. This condition is contrary to the provisions of section 54 and 23 of the Income-tax Act, 1961 which allows the beneficial provisions specified therein to assessees owning two house properties. In the Interim Budget presented on 01.02.2019, the Finance Act 2019 amended section 23 so that the assessee can claim two house properties as self-occupied for the purpose of calculating the annual value u/s 23(2) under the head 'Income from house property'. Even under the head 'income from capital gains', the assessee can opt for 2 residential houses of upto Rs 2 crores for reinvestment purposes (u/s 54) while calculating taxable capital gains. Accordingly, the aforesaid condition attached to the section 80EEA makes the assessee ineligible to claim the interest under this section if he owns any other house on the date of sanction of the loan.	***PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
43.	***Section 80EEB- Tax incentive for electric vehicles/Deduction in respect of purchase of electric vehicle***	With a view to improve environment and to reduce vehicular pollution, the Finance (No. 2) Act, 2019 has inserted a new section 80EEB so as to provide an additional income tax deduction of Rs 1.5 lakh on the interest paid on loans taken to purchase electric vehicles. **Issue:** As per Explanatory Memorandum, in order to avail the benefit of the deduction, one of the conditions	***It is suggested that section 80EEB may be suitably amended so as to incorporate the condition of not owning any other electric vehicle at the time of sanction of loan as envisaged in the Explanatory Memorandum.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		specified is that the assessee does not own any other electric vehicle on the date of sanction of loan. However, this condition is not there in the section 80EEB of Finance (No. 2) Act 2019. This condition is in line with a similar condition of not owning any other house property on the date of sanction of loan as per section 80EEA.	

PART C-
DEDUCTIONS IN RESPECT OF CERTAIN INCOMES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
44.	***Section 80PA – Applicability of MAT***	The Finance Act 2018 inserted a new section 80PA to incentivize Farm Producer companies on lines similar to existing section 80P. The provision provides for 100% deduction in respect of Farm Producer companies having total turnover upto Rs 100 crore whose gross total income includes the incomes specified therein. As aforesaid, on similar lines as of Co-operative Society, the Hon'ble Finance Minister of India had introduced section 80PA for Farmers Producer Companies vide the Union Budget, 2018 (100% deduction for 5 years). But there is no respective amendment in section 115JB (pertaining to Minimum Alternate Tax). There is a case for an an amendment in section 115JB also to fully exempt Farmers Producer Companies from taxation. The Hon'ble Finance Minister has said in his budget speech that government is giving deduction to Farmers Producer Companies on similar lines as of Co-operative Societies. *Relevant extracts of the speech-* "47. Madam Speaker, at present, hundred per cent deduction is allowed in respect of profit of co-operative societies which provide assistance to its members engaged in primary agricultural activities. Over the last few years, a number of Farmer Producer Companies have been set up along the lines of co-operative societies which also provide similar assistance to their members. In order to encourage professionalism in post-harvest value addition in agriculture, I propose to allow hundred per cent deduction to these companies registered as Farmer Producer Companies and having annual	***It is suggested to amend section 80PA/115JB appropriately such that MAT is not applicable to Farmers Producer companies.*** ***In case MAT is made applicable to Farmers Producer Companies, then there will still be a tax burden of 15% on producer companies.*** ***Appropriate amendment may be made in Section 115JB to free the Farmers Farmer's Producer Companies from tax bracket.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		turnover up to `100 crores in respect of their profit derived from such activities for a period of five years from financial year 2018-19. This measure will encourage "Operation Greens" mission announced by me earlier and it will give a boost to Sampada Yojana." *Co-operative Society Taxation* Section 115JC (pertaining to Alternate Minimum Tax) is applicable to Co-operative Societies. But, due to specific reference in Section 115JC, the Co-operative Societies which take deduction of Section 80P, can also reduce book profits by the amount of deduction claimed under Section 80P. It may be noted that while cooperative assesses are not exposed to tax based on book profit like companies, they are to pay a minimum tax based on adjusted total income which shall be computed by increasing the deductions as claimed by assessee under any section included in Chapter VI-A of the heading 'C – Deductions in respect of certain incomes' (but excluding any deduction u/s 80P) and deduction claimed u/s 10AA, with the total income as assessed by AO. In other words, the cooperatives, which are only entitled to deduction u/s 80P, shall not be affected by the AMT provisions.	
45.	***Deduction in respect of interest on deposits in savings account - Section 80TTA***	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. 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.	***Interest on all types of deposits (eg FDRs) may also be included within the scope of section 80TTA.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
46.	***Section 80TTB – Deduction in respect of interest on deposits in case of senior citizens – Request to extend the benefit by including interest on National Savings Certificate within the ambit of section 80TTB***	The Finance Act 2018 inserted a new section 80TTB so as to allow a deduction upto Rs 50,000/- in respect of interest income on deposits made by senior citizens. The aforesaid new section, inter alia, provides that where the gross total income of an assessee, being a senior citizen, includes any income by way of interest on deposits with a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or a co-operative society engaged in the business of banking (including a co-operative land mortgage bank or a co-operative land development bank) or a Post Office as defined in clause (k) of section 2 of the Indian Post Office Act, 1898, a deduction of an amount up to Rs. 50,000 shall be allowed. This amendment will greatly benefit the senior citizens whose main source of income is generally from interest income. It is pertinent to mention that another main source of income for senior citizens is interest income on National Savings Certificate which can be purchased from Post Offices in India. In order to extend the benefit of provisions of section 80TTB to senior citizens, it is recommended that interest income arising to Senior Citizens on National savings Certificate may also be included within the ambit of section 80TTB.	***It is suggested that income by way of interest on National Savings Certificate also be included within the ambit of provisions of section 80TTB, so that senior citizens who have purchased NSCs from post offices are also able to avail the benefit of enhanced deduction under section 80TTB.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
47.	***Section 80U – Consequential amendments required due to the enactment of 'The Rights of Persons with Disabilities Act, 2016' w.e.f.***	Section 80U, *inter alia*, provide for a deduction to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability. As per Explanation to the said section, certain terms like "disability", "medical authority", "person with disability" and "person with severe disability" have been defined w.r.t. to provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, the said Act has been repealed w.e.f. 28.12.2016 with the enactment of the 'The Rights of Persons with Disabilities Act,	***It is suggested that section 80U may be suitably amended so as appropriately incorporate the provisions of the newly enacted law i.e. 'The Rights of Persons with Disabilities Act, 2016' repealing the law 'the Persons with Disabilities***

Sr. No	Section	Issue/Justification	Suggestion
	28.12.2016	2016'. Accordingly, section 80U needs amendment in consonance with the new Act. Some of the salient features of the new law are: i. Disability has been defined based on an evolving and dynamic concept. ii. The types of disabilities have been increased from existing 7 to 21 and the Central Government will have the power to add more types of disabilities.	***(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' w.e.f. 28.12.2016 as referred in existing section 80U.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
48.	***Domestic Transfer Pricing [DTP] – Sections 92, 92BA, 92C, 92CA, 92D & 92E*** ***a) Arm's Length Price vs Ordinary Profits***	Section 80-IA(8) deals with "ordinary profits" whereas transfer pricing compliance refers to the "Arm's Length Price" of the transactions. Conceptually, 'price principles' cannot apply for benchmarking of 'profits'.	***In view of aforesaid, appropriate amendment may be made.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	b) Advance Pricing Agreements	Currently, APA provisions are being made applicable to only international transactions.	***The same should also be made applicable to domestic transactions covered by DTP provisions.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	c) Documentation Requirements	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.	***It is suggested that the maintenance of documentation as required for transfer pricing should not be applicable. Alternatively, a threshold limit of Rs. 25 crores be introduced for TP documentation requirements.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

CHAPTER XII-

DETERMINATION OF TAX IN SPECIAL CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
49.	***Section 115BAB(2)(b) - scope may be enlarged***	Currently, the benefit of reduced tax rate is given to companies engaged solely in the business of manufacturing. Manufacturing companies may be allowed to undertake certain trading or job work activities, in addition to their normal manufacturing activities as this will help to increase their revenue in the initial stages of operation. This is line with the normal practices followed by manufacturers who even undertake job-work as ancillary activity.	***It is suggested that section 115BAB(2)(b) may be amended so as to enlarge the activities undertaken by manufacturing companies under it (eg ancillary trading/job work).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
50.	***Section 115BBDA –*** ***(a) Dividend received by resident individuals, HUFs and firms receiving dividend in excess of Rs.10 lakh to be subject to tax @ 10% in their hands – Consequence of the new levy- Triple taxation***	The provision to tax dividend in the hands of the recipient results in economic four level taxation viz. - once as corporate tax on profits, - secondly as DDT in hands of the company, - thirdly as tax on dividends. - Fourth by disallowing expenses on dividend u/s. 14A. The economic tax ultimately borne by resident shareholders may be as high as 54%.	***It is suggested that this levy amounting to multiple level taxation on profits may be done away with.*** ***Alternatively, the earlier system of taxation of dividend, prior to 1997, namely, tax in the hands of the shareholder can be re-introduced and levy of Dividend Distribution Tax in the hands of the company may be removed.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(b) Tax on certain dividends received from domestic companies	In the Finance Act, 2016 new section 115BBDA was introduced to levy tax on certain dividend income received by a resident individual, HUF and firms aggregating Rs.10 lakhs at the rate of 10%. However, the act has not clarified about the payment of advance tax on the same.	***As the timing of receipt of dividend is uncertain and estimation of the same is also not possible, it is suggested that exemption from advance tax provisions may be given for such Dividend Income taxable under section 115BBDA.***

Sr. No	Section	Issue/Justification	Suggestion
			Further, it is suggested that full and complete advance tax in this respect may be permitted to be paid by the 31st march of the previous year. ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
51.	***Section 115BBF – Rationalizing patent tax regime***	India introduced its patent box regime vide Finance Act 2016 with effect from 01 April 2017. Under the regime, royalty income in respect of a patent developed and registered in India shall be taxable at a flat rate of 10%. The existing patent box regime suffers from the following issues: *(i)* *The patents to be 'registered' in India* - It is unclear as to whether a patent which has been applied for, but for which registration has not been granted will qualify under this regime. *(ii)* *Coverage of regime has been restricted to Patents* - Patent Box regime is not available to other IPRs, like industrial design, copyrights, trademarks, etc. *(iii)* *No guidelines on outsourcing of IP development* - There are no guidelines on outsourcing of R&D functions. Thus, limited outsourcing may also raise an issue on availability of benefit under patent box regime. *(iv)* *Initial patent developed by individual* - The benefit is available to the true and first inventor of the invention. Thus, where a company acquires a patent developed by an individual and invests to develop it further to make it marketable, it may not be eligible for the benefit.	***Following suggestions are intended to rationalise existing Patent tax regime:*** ***(i) It may be clarified that benefit of regime may be obtained where a patent is applied for, but registration has not yet been granted under the Patent law.*** ***(ii) It is suggested that the Patent Box regime should be extended to other forms of IPRs, like industrial design, copyrights, trademarks, etc. so as to promote IPR registration in India.*** ***(iii) It may be clarified that benefit of the regime shall be available, subject to a reasonable threshold, in cases where IP development is outsourced.*** ***(iv) It is suggested that the existing regime may be liberalised to grant benefit to a person who acquires patent from the 'true and first inventor' and further makes is commercially useable.*** ***(SUGGESTION TO CHECK TAX AVOIDANCE)***

Sr. No	Section	Issue/Justification	Suggestion
		The suggestion would strengthen the existing Patent Box regime. Further, the suggestion is intended to encourage R&D in India, stimulate growth and reduce litigation.	
52.	***Section 115BBE – Need to reconsider the high rate of tax***	Section 115BBE was amended during the demonetization period where if income was assessed u/s 68 to 69D, tax would be charged @ effective rate of 79%. In the current scenario, the rate is very high / harsh and needs to be reconsidered. It is not required now to tax at such high rate.	***It is suggested that rate of tax u/s 115BBE be restored to 30% and surcharge thereon be reduced as per applicable total income levels/slab rates.*** ***(SUGGESTION TO CHECK TAX AVOIDANCE)***
53.	***Section 115BBG - Income from transfer of carbon credits to be taxed @ 10% - Inclusion in definition of income under section 2(24) and clarification regarding tax treatment for prior assessment years***	The introduction of section 115BBG vide the Finance Act, 2017 providing for a 10 percent tax on income from transfer of carbon credits is a welcome move. This would go a long way in helping to resolve the uncertainty and litigation over the taxability of income from the transfer of carbon credits going forward. Consequent amendment is required in the definition of the term 'income' under Section 2(24) of the Income-tax Act to include the income from transfer of carbon credits. Further, the position regarding taxability of income from transfer of carbon credits for earlier years may be clarified since there have been divergent decisions given by the courts on whether such receipts are capital or revenue in nature. If the tax treatment is made applicable for earlier years also, it would garner more revenue from assessees who have not offered the same to tax on the ground that the same represents capital receipt. This would also help avoid future litigation and complete pending assessments. The Government has also been taking several steps aimed at curbing litigation. These include coming up with schemes for dispute resolution both for legacy disputes arising out of retrospective amendments as well as other disputes that are pending in the appellate hierarchy. These measures and schemes are	***It is suggested that section 2(24) may be amended to include income from transfer of carbon credits in the definition of "income".*** ***The option to pay tax on such receipts at 10% could be structured as a one-time scheme open for a limited time.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
		welcome steps and have been commended by the taxpayers. A similar scheme for income from transfer of carbon credits for the past years would go a long way towards furthering the Government's stated objective of curbing litigation.	

CHAPTER XII-B

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
54.	***Section 115JB - Insertion of clause (iih) in Explanation 1 to section 115JB - Downward adjustment of aggregate brought forward losses and depreciation u/s 115JB***	The newly legislated Insolvency and Bankruptcy code, 2016 (IBC) is a comprehensive legislation in India dealing with insolvency and bankruptcy of Corporates. The Code consolidates all the other laws in India dealing with insolvency. Pursuant to enactment of IBC, the Sick Industrial Companies Act (SICA) has been repealed and provisions are made to enable sick companies undergoing resolution through BIFR to approach National Company Law Tribunal (NCLT). IBC provides for implementation of resolution plan which is intended to revive distressed companies in a time bound manner under the creditor in command process. Stakeholders have been facing enormous bottlenecks due to lack of clarity on tax issues. Unfortunately, there is no provision in IBC or Income-tax Act which provides for an overriding impact of resolution plan sanctioned by NCLT. The Finance Act, 2018 has provided that while computing book profits u/s 115JB of the Income-tax Act, a deduction will be allowed for aggregate of book profits and unabsorbed depreciation in case of companies in respect of which an application for initiating resolution process has been accepted by the adjudicating authority. **Issues:** i. The language used in Section 115JB creates a confusion as to whether aggregate of losses and depreciation as per books is to be considered for deduction or whether aggregate of losses and depreciation as computed for tax purposes is to be considered for downward adjustment from book profits. ii. The scheme of MAT is linked to book profits. The legislative intent also appears to be to refer to the amounts as per books of accounts. However, the language as is	***It is suggested that suitable clarification may be inserted in Section 115JB to clarify that the brought forward losses and unabsorbed depreciation for this purpose should be considered as per books of account. It may be provided that the aggregate of the brought forward losses and unabsorbed depreciation as at the end of the year preceding the year in which application is admitted may be allowed to be reduced from book profits.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		presently used in Section 115JB creates ambiguity. iii. Re-organisation by way of merger of distressed company is one of the known forms of reorganising distressed companies against whom proceeding under IBC has been initiated. There is a concern that the benefit u/s 115JB has been extended merely to the defaulting/distressed company against whom the application for resolution plan has been admitted and thus may not extend to the company into which the defaulting company may merge pursuant to the implementation of the resolution plan.	
55.	***Section 115JB - Minimum Alternate tax***	It appears that Disallowance/Adding back of provision for diminution in value of any asset for computation of "book profit" is to be made in case of every class of company {clause (i) to Explanation 1 to section 115JB(2)}. However, in case of banking companies, the Government may reconsider applicability of the disallowance provision. 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)(viia) 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.	***Clause (b) and (i) of Explanation 1 to section 115JB may be amended as follows-*** ***"(b) the amounts carried to any reserves, by whatever name called [other than a reserve specified under section 33AC and <u>a reserve created and allowed in accordance with the provisions of section 36(1)(viii)]</u>*** ***<u>....</u>*** ***(i) the amount or amounts set aside as provision for diminution in the value of any asset <u>(other than provision for bad and doubtful debts allowed as a deduction under section 36(1)(viia)</u>)"*** ***(SUGGESTIONS TO***

Sr. No	Section	Issue/Justification	Suggestion
			REDUCE/ MINIMIZE LITIGATIONS)
56.	***Section 115JB – MAT implications for Ind AS compliant companies***	Under Ind AS, prior period adjustments are not reflected in the financials in which error is discovered but earlier period financials are restated to which such errors pertain. There could be an issue if the return of income for such earlier year has already been filed and due date of filing revised return has lapsed.	***It is suggested that a specific provision for revising return in the aforesaid situation may be provided under section 139(5) or prior period adjustments may be allowed to be adjusted from book profit in the year in which errors are discovered.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

CHAPTER XII-D

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
57.	***Section 115-O - DDT on deemed dividend u/s 2(22)(e)***	Section 2(22)(e) is now amended to provide that, in the event of grant of loans and advances by closely held company either to the shareholders having 10% equity or to a concern in which such 10% equity holder has 20% beneficial ownership, the company itself will be liable to pay dividend distribution tax u/s.115-O at the applicable rate to the extent of accumulated profits, which the company possesses. Such tax will be payable regardless of the fact that the loan may have been given against proper interest and may have been repaid on due date. When a loan is given to a tainted concern, there has been a controversy whether the amount of dividend needs to be taxed in the hands of equity holder (who holds a nexus with the concern) or in the hands of the concern. **Issues:** (i) There could have been basic debate whether any such provision is at all fair where loans and advances are given either on proper interest and re-payment terms or when loans and advances are given in connection with the business needs or in the ordinary course of business. Avoidable litigation has arisen even in cases where the advances are given for the purpose of purchase of goods in the ordinary course of business. The said amendment makes the provision stupendously unfair. (ii) The limit of 10% shareholding, which can establish nexus with the concern is considered in practice to be considerably low and impractical. It	***It is suggested that:*** *(i)* ***The continuance of the base provision itself in the current form may be re-considered. The provision was introduced at a time the tax rates were materially substantial, governance was difficult and closely held companies were almost universally governed by a singular family.*** *(ii)* ***Assuming it is not re-considered, by way of rationalisation, the applicability may be restricted to a case where the shareholder has at least 25% stake in each company, so as to capture a loan or advance to a concern.*** *(iii)* ***It would be desirable to address the genesis of the controversy instead of punishing the closely held companies. The current controversy may be retained with by the legislature specifying whether the amount of dividend should be taxed in the hands of the concerned shareholder or in the hands of the concern.*** *(iv)* ***From the scope of dividend, the advances and loans which are in connection with the business or which are in ordinary course of business should be excluded. Currently, this exclusion is available only to certain specific categories of taxpayers.*** *(v)* ***It would also be fair to exclude loans and advances which are given on terms which are regarded as ALP and / or reasonable.*** *(vi)* ***A liberal set off may be available***

Sr. No	Section	Issue/Justification	Suggestion
		is quite possible that an investor like PE investor or a passive investor may create such a situation without the concerns being aware of the same. Further, the requirement is beneficial holding in the concern. It may not be possible for a company giving loan to ascertain the beneficial holding of its shareholders in another concern. The company will be dependent wholly on the certification of the shareholder. Further, if the company proceeds on the basis of the certification provided by shareholder and the same were to be untrue, there might be adverse consequences considering the company and its principal officer will be regarded as assessee in default and all consequences of interest, penalty prosecution, etc. will consequently follow. (iii) One wonders whether the controversy (which is at the genesis of the said amendment) could have been taken care of by specifying in an explicit manner whether the amount will be chargeable in the hands of the concern or in the hands of the concerned shareholder. That alone was the controversy and a difficult solution may be avoided to get rid of the controversy (iv) The company will have extreme consequences of not being able to comply with the provision. This may often be due to unawareness. Unwarranted litigation may accrue on such subject. (v) It could be within the corporate governance for one company to give a loan to another on fair terms. Taxability in the hands of the company in the form of DDT – that too, where a mere 10% holder has shares in the company is a harsh	***by amending section 2(22)(e) to provide that, out of amount distributed by the company either in the same year or in the succeeding year, the amount of DDT paid earlier will be considered as a credit against DDT payable at the time of distribution.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

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<tr><th>Sr. No</th><th>Section</th><th>Issue/Justification</th><th>Suggestion</th></tr>
<tr><td></td><td></td><td>blow to the remaining 90% of the shareholders who lose their value on simultaneous basis upto the amount of tax paid. This would be a permanent loss to the shareholders. They are being punished for no fault of theirs.
(vi) There is very limited scope available for mitigating the liability by means of set off provided for in the section. This is unlikely to be a possibility where loan is to a concern. As a result, the corporate group will end up with extraordinary liability which can range up to 70.53 % of income of the company. This will be a highly discriminatory treatment against the closely held company structures.</td><td></td></tr>
<tr><td>58.</td><td>Section 115-O - Grossing up of rate of dividend distribution tax</td><td>Section 115-O was introduced vide the Finance Act, 1997 w.e.f 1.6.1997, with a view to reduce the hardship caused to the shareholders due to the procedural work for refund and a lot of paper work. It was provided that any dividend declared by an Indian company will be taxable in the hands of the company and it would be tax free in the hands of the shareholders. The rate of dividend distribution tax was increased over the years to 15% (plus surcharge and education cess).

However, the Finance (No. 2) Act 2014 provided for the rate of dividend distribution tax to be grossed up w.e.f. 1 October, 2014. Thus, the effective dividend distribution tax rate would increase to 17.647% (plus surcharge and education cess). Table below will illustrate the difference in cash outflow after the amendment:

<table><tr><th>Particulars</th><th>Earlier</th><th>Now</th></tr><tr><td>Dividend declared</td><td>500</td><td>500</td></tr></table></td><td>In order to encourage small shareholders to invest in domestic companies, it is suggested to drop the requirement of grossing up the dividend distribution tax rate.

(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</td></tr>
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<tr><th>Sr. No</th><th>Section</th><th>Issue/Justification</th><th>Suggestion</th></tr>
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<tr><td>DDT (Incl. of surcharge and education Cess)</td><td>84.975</td><td>99.95</td></tr>
<tr><td>Total Outflow for the company</td><td>584.975</td><td>599.95</td></tr>
</table>
If the company decides to keep the outflow constant i.e. Rs 584.975/-, then as per the amendment, dividend to be received in the hands of shareholders would reduce to Rs 487.52/- [584.975*500 / 599.95] as compared to Rs 500/-.
In other words, shareholders would receive 2.499% less as compared to what they would have received under earlier provisions. Even though dividend income is exempt in the hands of shareholders, it will mainly affect the large number of small shareholders, whose income is below exemption limit as they would have paid tax on dividend received at a lower rate.
Further, the total outflow for the company would also increase by 2.99% (including surcharge and education cess).
</td><td></td></tr>
<tr><td>59.</td><td>Section 115-O - Dividend Distribution Tax</td><td>
W.e.f. 1 October, 2014 the rate of dividend distribution tax is required to be grossed up before paying tax. Thus, the effective dividend distribution tax rate would increase to 17.647% (plus surcharge and education Cess). This has increased the tax outflow in the hands of the companies declaring dividends.
Even though the dividend income is exempt in the hands of shareholders upto Rs. 10 lakhs, it will mainly affect the large number
</td><td>
Thus, in order to attract foreign investors to invest in domestic companies, it is suggested to drop the provisions of DDT and replace it by TDS.
Alternatively, the effective rate of DDT be reduced from approx. 20 % to effective 15%. Simultaneously, there is a case of reduction of alternate minimum tax rate to be reduced to 15% effective from 18.5% currently in line with
</td></tr>
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Sr. No	Section	Issue/Justification	Suggestion
		of small shareholders, whose income is below exemption limit or whose taxable income falls within the tax bracket of 10%. (i.e. less than Rs 5 lakhs) as they would have paid tax on dividend received at a lower rate. It may be noted that overall taxation on profits of Rs. 100 earned by a company is 43.75% as explained below – Tax by company on profits of Rs. 100 (@ 25%) = Rs 25 Tax on dividend payout of Rs. 62.5 (approx. 20%) = Rs. 12.5 Tax by individual tax payers (@10%) = Rs 6.25	***amendment made to section 115JB.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

CHAPTER XII-DA

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
60.	***Section 115QA – Effect on foreign investments***	As per section 115QA of Income-tax Act 1961, (Chapter XII-DA), in the case of distribution of income by the unlisted company on Buy back of shares the law casts an obligation on the company to pay additional income tax @20% on the distributed income in addition to the corporate tax. In the case of foreign investor, the tax of 20% becomes payable even though the amount received by him in foreign currency works out to less than the amount which was brought in at the time of initial investment. To elaborate, the following illustration has been given: 1. Amount invested by foreign investor in unlisted company = USD 1 million 2. Amount for which shares were issued (Exchange rate USD 1 = INR 40) = INR 4 Crores 3. No. of shares issued @10 per share = 40,00,000 4. No. of Shares bought back by the company (25% of share issued) 10,00,000 5. Amount paid to foreign investor (buy back price INR 12.50 per share) = INR 1,25,00,000 6. Amount received by foreign investor {USD 1 = INR 60} = USD 208,333 7. Loss to foreign investor (i.e. 250,000-208,333) = USD 41,667 8. Additional tax payable by the company (125,00,000–100,00,000)*20% = INR 500,000 Tax to be paid by the company on Rs. 25,00,000 is the final tax in addition to corporate tax and the amount of tax so paid is nothing but tax paid by the foreign investor. The foreign investor is thus required to pay tax even when he makes losses. Private equity investor who had invested in India are facing double concern - firstly in the form of sharp depreciation in	***In view of the concerns faced by foreign investors after introduction of section 115QA, suitable amendments may be carried out in the Income-tax Act, 1961 so that foreign investors do not have to pay tax when their holding results in losses only due to foreign exchange fluctuation.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		Indian Rupee and secondly in the form of tax amendment in the form of section 115QA. In this connection, it would be worthwhile to say that distributable income for foreign investor shall be worked out by making the foreign currency adjustment as per the provisions which exists in section 48 of Income-tax Act, 1961 used for computing capital gains, and tax should be levied only on the excess of amount received by investors over the amount brought in at the time of investment.	

CHAPTER XII-EB

SPECIAL PROVISIONS RELATING TO TAX ON ACCREDITED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS

Sr. No	Section	Issue/Justification	Suggestion
61.	***a) Recovery provisions on trustees etc. – Section 115TD(5)***	**Section 115TD(5) reads as follows:** ***"(5) The principal officer or the trustee of the trust or the institution****, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from,-…"* The term 'principal officer' is very widely defined in section 2(35) as follows- *"'principal officer', used with reference to a local authority or a company or any other public body or any association of persons or anybody of individuals, means—* *"(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or* *(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;"* The AO can consider almost any person connected with the management as the principal officer of the institution. It seems that primary liability to pay tax is on principal officer or the trustee and if they don't pay then that would be of Trust.	***Applicability of recovery provisions on the trustees etc. should be made only if it is proved that non-recovery is attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the charitable institution or trust.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	b) Section 115TD(5) - Period of 14 days insufficient	**Section 115TD(5) reads as follows:** *"**(5)** The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution*	***Time limit may be suitably modified /increased.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		shall also be liable to pay the tax on accreted income to the credit of the Central Government ***within fourteen days from****, ----…*" a. Time limit is too short to pay especially when institution is required to dispose of its assets to make payment. b. It takes longer time to take permission from Charity commissioner appointed under Maharashtra Public Trust Act, 1950. c. Further when capital assets are sold, proceeds would also be subject to capital gains tax. As per section 115TD(5),Tax need to be paid within a period of 14 days.	

CHAPTER XIV-

PROCEDURE FOR ASSESSMENT

DETAILED SUGGESTIONS

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
62.	***Seventh proviso to section 139(1) – Mandatory furnishing of return of income - Deposit amount exceeding one crore rupees in current account may be made applicable to all types of accounts***	The Finance (No. 2) Act, 2019 amended section 139(1) by inserting a proviso so as to specify certain high value transactions wherein ITR filing is being made mandatory. One of the transactions specified is if during the previous year, assessee has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank. **Issue I: Scope to be enlarged** As all current accounts maintained with the banks are PAN based i.e. PAN is one of the mandatory KYC docs for opening a current account with a bank, so transactions in such current accounts can easily be tracked. There is a case to extend the scope of aforesaid specified transaction from deposit in a current account to all the accounts maintained with the bank i.e be it saving account or any other account. This will better serve the intent of the government to make mandatory filing of ITRs involving high value transactions. Further, the aforesaid high value transaction is limited to current account maintained with a banking company or a co-operative bank. It is better if the account maintained with a co-operative society engaged in carrying on the business of banking as well as a post office also gets covered here. This will also align with the provisions of section 194N. **Issue II: The term 'expenditure' may be replaced with term 'payment'** Clause (ii) and (iii) of seventh proviso to section 139(1) reads as follows: "(ii) has incurred ***expenditure*** of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or (iii) has incurred ***expenditure*** of an amount or	***(i) It is suggested that scope of clause (i) of seventh proviso to section 139(1) pertaining to deposit exceeding Rs 1 crore may be extended to include:*** ***(a) all types of account maintained with specified authorities i.e saving account etc (along with current account), and*** ***(b) deposits made in accounts maintained with a co-operative society engaged in carrying on the business of banking as well as a post office (apart from a banking company or a co-operative bank) within its ambit to align with provisions of section 194N.*** ***(ii) It is suggested that the term 'expenditure' as used in clause (ii) and (iii) of seventh proviso to section 139(1) may be changed to the term*** 'payment' ***so as to better convey the intent of the amendment.***

Sr. No	Section	Issue/Justification	Suggestion
		aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or" [emphasis supplied] The term 'expenditure' may not convey the meaning intended for due to the following two reasons: (a) Incurring expenditure normally connote a 'business' expenditure and may not cover/apply to non-business expenditure although intention is quite clear that expenditure of foreign travel and electricity consumption may be for any purpose including personal. (b) Suppose, parents of assessee 'X' has gone for foreign air travel and payment thereof made by 'X'. Now the expenditure is being incurred by the parents but is being paid by 'X". The purpose is to get ITR filed by 'X' and not by his parents.	***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
63.	***Explanation 2 to section 139(1) – Need to synchronize due date of partner with that of Firm liable for domestic transfer pricing provisions***	As per clause (a)(ii) of Explanation 2 to section 139(1), the due date to file ITR for a working partner of a firm whose accounts are required to be audited under Income-tax Act or under any other law for the time being in force is 30th September of AY. However, as per clause (aa) of Explanation 2 to section 139(1), the due date to file ITR in the case of an assessee who is required to furnish a report referred to in section 92E is 30th November of AY. Difficulty is being faced by working partners of Firm which are liable to file its ITR by 30th November of the AY due to application of domestic transfer pricing provisions under section 92BA. It has been observed that difficulties are being faced by partners (including 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 partners to mention such capital balance on 31st March in the firm (liable to get its accounts audited and file its return by 30th November in case of applicability of section 92E	***It is suggested that section 139(1) may be appropriately amended so that due date to file ITR for working partners of a firm which is liable to furnish its ITR by 30th November of the AY (due to application of section 92E r.w.s. 92BA) be synchronised with the existing due date of 30th September of the AY applicable for working partners of such firms. It may kept in mind that non-working partners have to give balance of capital accounts in ITR. So, all partners should have same ITR filing due date as that of a firm.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		read with section 92BA)) in his return, until the audit of such firm is completed. Thus, it is suggested that said difficulty may be resolved as it is not practicable to have different dates of filing for such assessees.	
64.	***Section 139(4) – A reasonable penalty may be imposed for belated filing after expiry of time allowed***	As per section 139(4) pertaining to belated return, a person may furnish the return of any previous year at any time before the end of relevant AY (w.e.f. AY 2018-19). If a person misses the aforesaid deadline due to genuine reasons beyond his control, he may be allowed to use an extended date with a reasonable amount of penalty.	***It is suggested to amend section 139(4) so as to allow one more year after the end of AY for filling the belated return but with a reasonable amount of penalty say of Rs 100 per day.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
65.	***Section 139(4) and 139(5) – Time limit for filing belated return reduced - Reference to return in response to section 142(1) may be included in Sections 139(4) and 139(5)***	Prior to amendment made by the Finance Act, 2016: Section 139(4) provided that a person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Similarly, Prior to amendment made by the Finance Act, 2016, Section 139(5) provided that if any person, having furnished the return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142 discovers any omission or any wrong statement therein, he may furnish a revised return at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier. The Finance Act, 2016 has substituted section 139(4) & 139(5) as follows: *"(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant*	***It is suggested that-*** ***(i) Reference to sub-section (1) of section 142 may be reinstated in new section 139(4) i.e., enabling provision to be made for filing of belated return in response to notice under section 142(1).*** ***(ii) Section 139(5) may be amended to provide for revision of return filed in response to notice under section 142(1), in line with the intent expressed in the Explanatory Memorandum.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		assessment year or before the completion of the assessment, whichever is earlier."; *"(5) If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.";* Reference to return filed in response to section 142(1) is missing in new sub-section (4) and sub-section (5) of section 139. As per the Explanatory Memorandum to the Finance Bill, 2016, the return which can be revised under section 139(5) also includes a return furnished in response to notice issued under sub-section (1) of section 142. However, reference to notice under section 142(1) does not find place in the new sub-section (5) in the Finance Act, 2016.	
66.	***Section 139A – Amendment / surrender of PAN***	There is no provision as of now for amendment /surrender of PAN. Lots of jurisdictional issues arise due to non-intimation of change in address etc.	***It is suggested that provision may be made for:*** ***(a) application within 30 days of amendment in PAN data and*** ***(b) surrender on*** ***- death (by legal representative),*** ***- merger,*** ***- conversion,*** ***- liquidation,*** ***- strike-off.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
67.	***Section 139A – Need for certain persons to mandatorily have PAN***	Currently, certain persons who are required to file ITR are not mandated to apply for PAN. These include persons required to file ITR u/s • 139(4B) • 139(4C)	***It is suggested that aforesaid sections be added to section 139A(1)(iii) where only persons covered u/s 139(4A) are required to obtain PAN.***

Sr. No	Section	Issue/Justification	Suggestion
		• 139(4D) • 139(4E) • 139(4F)	***(SUGGESTION TO IMPROVE TAX COLLECTION)***
68.	***Section 142A - Estimation of value of asset by Valuation Officer***	As per the provision prior to Finance (No. 2) Act, 2014 contained in section 142A, the Assessing Officer may, for the purpose of making an assessment or re-assessment require the Valuation Officer to make an estimate of the value of any investment, any bullion, jewellery or fair market value of any property. On receipt of the report of the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard take into account such report for the purpose of assessment or re-assessment. Section 142A did not envisage rejection of books of account as a pre-condition for reference to the Valuation Officer for estimation of the value of any investment or property. Further, section 142A does not provide for any time limit for furnishing of the report by the Valuation Officer. As per the amended section 142A vide Finance (No. 2) Act, 2014, the Assessing Officer may, for the purpose of assessment or re-assessment, refer any asset, property or investment to a Valuation Officer, necessary for estimating its value. The Assessing Officer is not required to record any satisfaction about the correctness or completeness of the accounts of the assessee. Further, the report of the Valuation Officer may be accepted after giving the assessee opportunity of being heard. **Probable hardships after amendment by Finance (No. 2) Act, 2014** (a) As per the earlier section 142A, the Assessing Officer may refer to valuation for the purpose of estimating the value of any investment referred to in section 69 or 69A or 69B or 56(2). The law, as far as the trigger for valuation is concerned, was settled and permitted. The Assessing Officer was to	***Keeping in view the settled law on the subject, the legislature must specifically provide that satisfaction may be recorded before making any reference to the Valuation Officer.*** ***Alternately, sanction of a higher authority must be taken before any reference is made by the Assessing Officer.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		resort to valuation only after he was satisfied that the books of account were not correct or were incomplete. Henceforth, as per the amendment made, the Assessing Officer need not record any reason for making a reference. In fact, as is the experience, the Assessing Officer may even fear an audit enquiry or objection if they do not refer cases for valuation. (b) The amended section may open flood gates to valuation in each and every case resulting in unnecessary litigation and inappropriate use of valuable resources of the Department. (c) The Valuation Officer will become yet another authority who will sit over judgements on what should be the value of any property. As per the discretion available with him for valuation, it may also result in abuse. (d) The power and scope of reference to a Valuation Officer has been extended to any asset, property or investment, thus giving vast powers in the hands of the assessing authority without any check.	
69.	**Section 148 - Reasons for reopening to be sent along with notice for reopening of assessment**	Section 147 empowers an AO to reopen an assessment if he has "reasons to believe" that income has escaped assessment. In practice, the said notice usually does not spell out the reasons in proper detail. The said section does not have any procedural requirements, but a practice has developed and been laid down by the Hon'ble Supreme Court in ***GKN Driveshafts (India) Ltd. v ITO [2003] 259 ITR 19 (SC)*** case, to be mandatorily followed while reopening assessment. Presently notice is issued under section 148. Later, the assessee has to request for the 'reasons for reopening' from the AO. Thereafter the Assessing officer provides the reasoning.	***In view of the aforesaid, it is suggested that it would be more appropriate if suitable amendments be made in section 147/148 so as to follow the procedure laid down by Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. v ITO [2003] 259 ITR 19 (SC) ruling i.e. to supply reasons along with notice of reassessment and also to dispose off the objections by a speaking order.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***

Sr. No	Section	Issue/Justification	Suggestion
70.	***Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Section 155(14) has elapsed) demanded by the Government authorities at a later date***	Currently, 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 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. 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 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.	***It is suggested that considering the hardship being faced by assessees in respect of cases mentioned aforesaid, 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.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
71.	***Section 159 - Hardship in obtaining 'Legal Heir Certificate' for the purpose of registering deceased assessee's legal heir as representative assessee for e-filing of tax returns of a deceased assessee***	Section 159(1) provides that *"Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased."* Further, section 159(3) provides that *"The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee."* Thus, the legal representative of the deceased assessee needs to comply with various provisions like filing of Return, payment of taxes, complying with assessment proceeding on behalf of the deceased assessee.	***Considering the problems faced as aforesaid, it is suggested that*** ***a. That the filing of the documents at (i) to (iii) should be made as sufficient compliance (i.e. Copy of Death Certificate, Copy of PAN of deceased and Self attested PAN copy of the Legal Heir).*** ***b. One of the following alternatives be provided in the Act in place of legal heir Certificate:*** ***i) Affidavit from the legal heir or,*** ***ii) Certificate of nomination from institutions like banks or,*** ***iii) Copy of Ration Card***

Sr. No	Section	Issue/Justification	Suggestion
		Filing of tax returns electronically is mandatory for assessees except a few exceptions as provide in Rule 12. The Existing procedure to register oneself as legal representative of deceased assessee for filing return of income of deceased assessee is described in brief as below: a. The legal representative needs to register himself as 'Legal Heir' on the E-Filing portal in order to file return of deceased assessee. This is for the period that Income was earned by the deceased but cannot be returned by him since he has since passed away. b. Request needs to be made through E-Filing portal for above registration by providing certain details of deceased assessee along with certain specified documents. c. The following are the documents which are to be submitted/uploaded: i) Copy of Death Certificate. ii) Copy of PAN of deceased. iii) Self attested PAN copy of the Legal Heir. iv) Legal Heir Certificate issued by the Court/Local Revenue Authority. or Surviving member certificate issued by the Local Authority. Or Pension Order issued by Central/State Government. Or Registered will. d. On fulfilling the above details, one can submit the request and will be provided an acknowledgement along with a Transaction ID. e. The department would then 'accept/reject' the request based on the details and documents uploaded. Where request has been rejected, department will provide the ground for rejection, which can be viewed by clicking on Transaction ID. 4. All the documents as specified in sub-point 'c' above, are generally available or can be easily obtained except for those specified in (iv).	***specifying the name and relation with the legal heir.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		The issues faced for obtaining 'Legal Heir' certificate are as under: a. Obtaining legal heir certificate or Surviving member certificate from Court/ Local revenue authority is very time consuming as well as a cumbersome. b. Pension Order is issued by Central/State Government only to its employees and thus any person other than government employee would not be able to obtain the Pension Order. c. While a will may be available in various cases, registration of a will is not mandatory. Getting a will registered subsequent to the demise of an assessee is not possible. d. Thus taking up a case of a person who is neither a government employee nor in possession of registered will, the only option left for him is to approach Court/Local revenue authority to obtain the said certificate, which is generally a very complex exercise with heavy monetary obligations in terms of cost and time.	
72.	***Section 171 - Assessment after partition of a Hindu undivided family***	Section 171(1) provides that an HUF hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be an HUF, except where and in so far as a finding of partition has been given under this section in respect of the HUF. However, currently there is no procedure specified anywhere regarding intimation of partition by the HUF to the concerned AO. Accordingly, it is desirable that a mechanism may be devised for such reporting. An accountant certificate certifying the partition of HUF along with its assets and liabilities position and its allocation among its members would be beneficial to the revenue.	***It is suggested that section 171 may be suitably amended such that powers be provided to the government to notify an Accountant certificate to be issued intimating the partition of the HUF. Necessary amendments may be made in the Income-tax Rules, 1962 thereafter regarding notification of an accountant certificate and amendment in ITR Forms.***

CHAPTER-XVII

COLLECTION AND RECOVERY OF TAX

PART B-DEDUCTION AT SOURCE

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
73.	***Section 192 – Need for clarity on TDS on family pension***	There are so many cases relating to confusion on TDS on family pension. Some deductors deduct tax u/s 192 as salary but being the fact that the person who is getting the pension is not employee of the organization. Others deduct tax u/s 194A for avoiding any difficulties in ITR filing of the person getting the pension. There are so many cases where people get notice from department regarding processing of ITR which is due to the section quoted in TDS returns. There must be a specific provision for TDS on Family pension. This would help assessee as well as department to get rid of unnecessary time consuming litigations.	***It is suggested to insert a new section under TDS provisions taxing family pension exceeding say Rs 2,40,000 pa liable for TDS @ 10%. Simultaneously, section 192 may be amended to specifically exclude taxability of pension under its provisions.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
74.	***Section 193 - No tax withholding on 'interest on securities' earned by a business trust defined as per section 10(23FC)***	As per section 10(23FC), any income of a business trust by way of interest received or receivable from a 'special purpose vehicle' shall be exempt. Special purpose vehicle has been defined as 'an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is registered'. Further, Circular 1/2015 dated 21 January 2015 and the Memorandum to the Finance Bill, 2014 with respect to the taxation regime of	***It is suggested that as provided in section 194A, a similar exclusion may be provided in section 193 with respect to no applicability of tax withholding on any income by way of interest referred to in section 10(23FC).*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
		business trust states the following- "*The income by way of interest received by the business trust from SPV is accorded pass through treatment i.e.,* ***there is no taxation of such interest income in the hands of the trust and no withholding tax at the level of SPV****.* (emphasis supplied) Accordingly, section 194A(3) – Interest other than Interest of securities provides that tax withholding shall not apply in case of any income by way of interest referred to in section 10(23FC).	
75.	***Section 194A- TDS on compensation received under Motor Vehicles Act***	In various judgments, it has been well established that compensation received on Motor Accident Claim is capital receipts and hence does not even fall within the definition of income under Income-tax law and hence not taxable. Other reasons are, MACT compensation is a compensation for agony, loss of mobility, physical damage and loss of earnings suffered by the victim, granted by courts and not compensation granted under statutory provision. In the case of interest, interest on compensation is also not taxable on the theory that when principal transaction (Compensation) is outside the ambit of taxation, then similar fate must follow for the subsidiary transaction (i.e. interest on compensation). The matter of MACT compensation coming to litigation is because of the following sections in Income-tax Act, 1961-	***It is suggested to*** ***(1) scrap TDS on interest awarded by Motor accident claim Tribunal and*** ***(2) Insert a specific exemption under section 10 for amount received on Compensation, enhanced compensation and interest on compensation awarded by Motor Accident Claim Tribunal.*** ***194A(3)(ixa) may be omitted and in section 194A(3)(ix), word 'or paid' can be inserted between 'credited' and 'by way of interest'.*** ***There are separate exemptions available under 10(10B) for***

Sr. No	Section	Issue/Justification	Suggestion
		(1) Main reason - Section 194A(3)(ixa) requiring tax to be deducted on interest on compensation awarded by MACT, where the aggregate amount of Income paid during the financial year exceeds Rs 50,000/-, (2) Section 145A(b) requires that Interest received on compensation or enhanced compensation shall be accounted on receipt basis, (3) Section 56(2) has listed in clause (viii), Income received on compensation or on enhanced compensation referred to in Section 145A(b) to be taxed under Income from other source, (4) Section 57(iv) allows deduction of 50% of income referred to section 56(2)(viii). Even though section 145A(b), 56(2)(viii) and 57(iv) says only about compensation generally, it is section 194A(3)(ixa) which created biggest problem and confusion because, it specifically says about TDS on Interest on Motor Accident Claim Tribunal. Even though provision of TDS and taxable Income works separately under present system of Income Tax, simply by insertion of TDS on interest on MACT has given an impression that interest on MACT itself is a taxable income which created confusion and consequent litigations. 1. There are various legal decisions which ruled that MACT compensation is ab-initio not an income. Actually, when something is not at all an income and does not	***compensation received by a workman under Industrial Dispute Act, under 10(10BB) any payments received under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 10(10BC) compensation received from Government on account of any disaster. Likewise, it is suggested to insert a new section 10(10BD) for MACT compensation, which can be drafted as follows*** ***"any amount received or receivable by way of compensation or enhanced compensation or interest on compensation awarded by the Motor Accident Claim Tribunal".*** ***It is also suggested that the word to be used in 10(10BD), should be 'any amount', i.e. not just for compensation for permanent disability. It should also be for temporary disablement. Sufferings of temporary disabled claimants should also be considered.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		fall under the purview of Income-tax Act, 1961 for taxation, there is no need to give an exemption under section 10. Only those income which are otherwise taxable and as a relief measure, Government wants to not to tax it, exemption under 10 is to be provided. Even disaster compensation mentioned under section 10(10BC) is not an income ab-initio for giving an exemption. However, insertion of such exemption is clarificatory in nature and stops any possible litigation, which is an unwanted wastage of time and which aggravate the sufferings of those who have already suffered the impact of catastrophe. Hence for MACT compensation also, on similar line, an exemption should be provided. 2. Person who is getting claim under MACT are those who had already undergone extreme physical and mental sufferings in their life and sometimes they are getting compensation fighting at court and after waiting for years. Hence it is highly required to bring this clarification so that they need not suffer again after getting compensation. As a social measure, suitable amendment and clarity should be brought under Income Tax law for this. 3. There is no exact method on how 50% is arrived for section 57(iv) deductions and it is not sufficient in many cases.	

Sr. No	Section	Issue/Justification	Suggestion
76.	***Section 194A – Need to raise threshold limit from 5,000 to Rs 10,000***	The present threshold limit of Rs. 5000.00 for deduction by other than Banks is very old and is too low. This limit of Rs. 5000.00 u/s 194A was fixed long ago, which is as much as 30 years ago. The basic exemption limit has increased multi-fold but this remained at the same level since then. This needs immediate change. Once the limit is raised to Rs 10,000 then there would be two thresholds only u/s 194A i.e 10,000 and 50,000 making compliance easier.	***It is suggested to raise the threshold limit of Rs. 5000.00 to Rs 10,000 u/s 194A applicable to deductors other than bank.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
77.	***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 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: a) NBFCs principal business	***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. 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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		is of lending money under various products just like Banking Company or a co-operative Bank. b) There is no mechanism for deduction of tax on interest paid by the assessees as the NBFCs collect cheques of EMI for the tenure of loan. c) NBFCs are also regulated by RBI just like Banking Company and a Co-operative Bank. Considering the fact that there is no mechanism for deduction of tax on interest paid by the assessees as the NBFCs collect cheques of EMI for the tenure of loan, the non-compliance of the provisions of this section is inevitable. However, 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 40(a)(ia).	
78.	***Section 194H – Request to increase TDS exemption limit to Rs 40,000***	The Digital India programme is a flagship programme of the Government of India with a vision to transform India into a digitally empowered society. In order to transform the entire ecosystem of public services, banking etc. through the use of information technology, the Government of India has launched the Digital India programme. One of the key initiatives of the government is to channelize all payments through Digital mode. It has come up with many incentives for using digital mode of payments and with certain dis-incentive for using cash mode of payments.	***It is suggested that TDS exemption limit u/s 194H may be increased to Rs 40,000 in cases of recipients having PAN.*** ***It will eliminate the following difficulties / challenges for the Merchants, Companies as well as Income-tax department:*** ***- It takes huge amount of calculations and on top of it, compliance of TDS on the small amounts on millions of transactions which is a very cumbersome task and the***

Sr. No	Section	Issue/Justification	Suggestion
		As part of promoting cashless transactions and converting India into less-cash society, various modes of digital payments are available. One of the modes is a point of sale (PoS). It is the place where sales are made. On a macro level, a PoS may be a mall, a market or a city. On a micro level, retailers consider a PoS to be the area where a customer completes a transaction, such as a checkout counter. It is also known as a point of purchase. It is a well-known fact that people still consider cash as the safest way to buy things. Hence, when somebody goes to a small shop, cash is the preferred way of payment. However, some companies are trying to change the way people transact and even on small outlets like Pan-shops, nearby grocery shops, the companies are pushing to transact digitally using e-Wallet. It requires a lot of push as this entails a behavioral change for the customer who needs to change his preferred mode of payment from cash to digital mode as well as for the merchant who is also supposed to accept payments digitally instead of traditional cash. While convenience and accountability is the key to digital payments, for the customer and merchants to change their behavior, government is giving incentives. Similar incentives are proposed by the private players also. These small incentives will go a long way	***TDS on the amounts may be in paisa as well. With the above volume, filing of TDS Returns and generation of TDS certificates is a challenge;*** ***- TDS provisions are applicable once the threshold limit crosses. In the given business scenario, incentives payable to the merchants is based on the business given by the merchants and thus, the projection of incentive payable by the Company is not be possible. If the Company starts TDS deduction before the threshold limit crosses, it will not be acceptable by the merchants;*** ***- There are enormous number of transactions with these small outlets / merchants, due to which the exercise of Income-tax department also gets burdened (i.e., humongous data in the TDS return, issuance of TDS certificates, transactions in Form 26AS). The administrative burden on the TDS officers also increases for the verification / reconciliation of such humongous data.*** ***(SUGGESTION FOR***

Sr. No	Section	Issue/Justification	Suggestion
		to make behavioural changes. It is to be noted here that there are voluminous transactions, but the incentive in absolute amount is very low. The number of merchants to be benefitted from the incentive programme is also huge, however, the amount payable to any single merchant may not be large. These incentives may be termed as "Commission" under the Income-tax Act, 1961 and thus, applicability of TDS provisions will arise.	***REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
79.	***Section 194-IA- Issues***	The provisions for tax deduction is 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 on account of capital gains. Further, for the purposes of section 54F and 54GB, the entire net consideration is required to be invested, which would pose a difficulty, since tax would already have been deducted from the net consideration.	***It is, therefore, suggested that section 197A 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 Officer and furnish a copy of the same to the buyer.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
80.	**Section 194-IA – Reduction in threshold limit to Rs. 30,00,000**	As per the provisions of section 194-IA, 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. Due to this high threshold of Rs. 50	***It is suggested that section 194-IA be amended so as to reduce the threshold limit to deduct tax from Rs. 50 lakhs currently to Rs. 30 lakhs.*** ***(SUGGESTION FOR IMPROVING TAX***

Sr. No	Section	Issue/Justification	Suggestion
		lakhs, some of the unscrupulous assessees are getting the property registered at just under Rs. 50 lakhs of sale consideration to avoid TDS u/s 194-IA. Also, as per Income-tax Rules, any sale purchase of property whose stamp duty value exceeds Rs. 30,00,000 needs to be reported in Statement of Financial Transaction.	***COLLECTION)***
81.	***Section 194J - Fees for professional or technical services***	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, other than those on which tax is deductible under section 192. 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.	***It is suggested that 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 deduction at source.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
82.	***Section 194N - Practical difficulties to be faced and clarifications required regarding implementation of proposed provision of TDS @ 2% on cash withdrawals exceeding Rs 1,00,00,000***	The Finance (No. 2) Act, 2019 has introduced a new section 194N in order to discourage cash transactions by levying TDS @ 2% on cash withdrawals exceeding Rs 1 crore from banks including co-operative banks or post offices subject to certain exceptions as provided therein. There are certain concerns with regard to implementation of provisions which needs to be addressed.	***(i) It is suggested that the intent expressed in the budget speech w.r.t discouraging making of business payments in cash for introducing section 194N may be suitably incorporated in the text of section 194N i.e. withdrawals from only current account may be taken into account for TDS purposes. This will***

Sr. No	Section	Issue/Justification	Suggestion
		Issue I: **Minor inconsistency between budget speech and finance bill** We refer to para 126 of the budget speech (relevant extract reproduced below): "To promote digital payments further, I propose to take a slew of measures. To discourage the practice of ***making business payments*** in cash, I propose to levy TDS of 2% on cash withdrawal exceeding ` 1 crore in a year from a bank account." [emphasis supplied] The Hon'ble FM referred to discouraging 'business' payments in cash while introducing provisions of section 194N. Payments for business are usually made from 'current account' maintained with banks. However, the text of the section 194N as per Finance (No. 2) Act, 2019 levies TDS on withdrawal from all types of accounts, be it current or saving or any other account maintained with the specified authority. The inconsistency between budget speech and the finance Act needs clarification.	***also align with provisions of seventh proviso to section 139(1) (mandatory ITR filing for deposits exceeding Rs 1 crore in current account). (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
		Issue II: **Term 'recipient' may not convey the right meaning** Relevant provision of section 194N reads as under: "Every person, being,— (i) a banking company to which the	***(ii) It is suggested that the term 'recipient' may not be required in section 194N and hence, following change may be made:*** ***"who is responsible for paying any sum, or, as the case may be, aggregate of sums, in***

Sr. No	Section	Issue/Justification	Suggestion
		Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a co-operative society engaged in carrying on the business of banking; or (iii) a post office, who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, ***to any person (herein referred to as the recipient)*** from ***one or more accounts maintained by the recipient*** with it shall, at the time of payment of such sum, deduct an amount equal to two per cent. of sum exceeding one crore rupees, as income-tax:" Referring to the term 'recipient' as used above, it may be noted that the said term is not defined anywhere. Also, reference to 'any person' is restricted to the 'recipient'. It is stated that the account is to be maintained by the recipient. It may be possible that the 'recipient' and the 'account holder' are two different persons. However, the intent of the amendment seems to identify 'recipient' as an account holder. If it is so, then if a person other than account holder withdraws amount; will this section be not applicable, or TDS would be levied, needs to be clarified.	***cash, in excess of one crore rupees during the previous year, to any person ~~(herein referred to as the recipient)~~ from an account maintained ~~by the recipient~~ with it shall, at the time of payment of such sum, deduct an amount equal to two per cent. of sum exceeding one crore rupees, as income-tax"*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
83.	***Section 197A – Certain assessees may be allowed benefit***	Section 197A deals with provisions for non-deduction to be made in certain cases. Further, Rule 29C authorizes for furnishing of Form No. 15G/H in such specified cases	***It is suggested that section 197A may be suitably amended so that certain assessees like those registered under***

Sr. No	Section	Issue/Justification	Suggestion
		so that no tax is deducted at source. However, currently in most cases only individuals and HUFs are able to claim the benefit of section 197A. There are certain other assessees who are made to file ITR forms to claim refund although in most cases either income is exempt or below the minimum threshold limit applicable to tax.	***section 12A can also file Form No. 15G/H (via suitable amendment in rule 29C).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
84.	***Section 197A - Rationalizing TDS applicability on Merchant Discount Rate ('MDR')***	As part of promoting cashless transactions and converting India into less-cash society, various modes of digital payments are available. These modes are regular banking channel which is Credit Card and Debit Card, where generally, Bank is the merchant acquirer. In the light of government's push on digital payments, the concept of Merchant Aggregator/Acquirer has come up where the Merchant Aggregator is not the bank, but a separate entity. Merchant Aggregator acquires various merchants and ties up with banks for processing of payments. The Merchant Aggregator collects money from banks on behalf of its merchants and then makes the final settlement with its merchants. The Merchant Aggregators are integral part of the overall Digital Payment system which act as a conduit between customers, bank and merchant. These Merchant Aggregators collect money from customer's bank/PPI Wallet and make payment to merchants. In a move aimed at encouraging the transition towards a cashless economy, the CBDT has exempted some payments made to banks and payment service providers from	***(i) It is suggested that MDR retained by bank from Merchant Aggregator and by Merchant Aggregator from Merchant Establishment may be exempted from TDS.*** ***(ii) The exemption u/s 197A(1F) may be extended to cases:*** ***- where the commission is retained by the bank while making payment to Merchant Aggregator (as the Income-tax department may consider Merchant Aggregator on a different footing with Merchant Establishment); and*** ***- where the commission is retained by the Merchant Aggregator while making payment to Merchants*** ***The above suggestion will remove the deterrent for merchant aggregators as they will be in line with merchant establishment. This move will encourage online transactions by***

Sr. No	*Section*	*Issue/Justification*	*Suggestion*
		deducting tax at source. These payments include credit card or debit card commissions for transactions between a merchant establishment and the bank. CBDT vide its Notification No. SO 3069(E), dated 31-12-2012, has notified that no deduction of tax under Chapter XVII shall be required on payments of the nature given below, in case such payment is made by a person to a bank, namely:- *(vii) Credit card or debit card commission for transaction between merchant establishment and acquirer bank*. Exemption under Sec 197A(1F), as given above, was introduced considering the problems being faced by merchants, where, merchants received the transaction value, net of Bank commission from Bank and there was no instance where the merchant made any payment to the Bank and hence it was not feasible for any merchant to withhold tax under the TDS provisions from Bank. Due to the above technical reason, merchants were exempted from the provisions of TDS when the commission was payable to Banks. With new technology and newer ways of making and accepting payments, it is imminent to widen the scope of this exemption. When Merchant Aggregator receives payment from bank for ultimate settlement with merchant, bank makes the payment to Merchant Aggregator after deducting its commission. The Merchant Aggregator, at no instance, get any chance to withhold Tax since it is only receiving payments and not	***reducing the compliance burden as the merchant establishment will not have to deduct TDS before making the payment to the Merchant Aggregators.*** ***This will also make the whole process seamless and the merchants will not be wary to accept the new modes of payment due to the additional compliance of withholding tax. This will encourage the merchants to move from cash to digital money, which is key pillar of the Government of India initiative of Digital India.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		making any payment to Bank. In the above instances, while the scenario is similar to the exemption given under powers as per section 197A(1F) and appearing in clause (vii) of the exemption list, still the exemption is limited to cases where the commission is received by bank from the merchant establishment.	
85.	***Section 204 – Issue w.r.t. appeal filing by Principal Officer u/s 201/201A***	As per section 204, person responsible for paying TDS is Principal Officer or Drawing and Disbursing Officer and as per Section 201 and 201A, proceedings are initiated against Principal Officer. However, to appeal against the order u/s 201 and 201A, the signing authority is the person responsible to file return u/s 139 i.e., company Managing director or Director authorized in his absence. In case of default committed by Principal Officer of a branch of bank the appeal has to be filed by Managing director. It is not always possible for a branch official to get an appeal filed by Managing Director of the Bank. In order to avoid the litigation and sometimes default, if any, is discharged by them personally.	***It is suggested that in order to mitigate the aforesaid issue, a provision may be inserted to facilitate filing of appeal against orders passed under 201/201A by Principal officer as per Section 204.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
86.	***TDS on Recharge Vouchers***	Telecom companies distribute their pre-paid services by transferring pre-paid service products to independent third party distributors at a discount over MRP. Independent third party distributor in turn sells to sub-distributor or the end customer. The transaction results in transfer of the right to receive pre-paid mobile telecommunication services from	***It is suggested to introduce a new section in the Income-tax Act, 1961 prescribing withholding tax rate of 1% on discount extended to the distributors of pre-paid service products.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		telecom operators to the distributors on a principal to principal basis. It may be noted that the distributors are not agents to the telecom operators and no tax is required to be withheld by the telecom companies on the discount extended to the prepaid distributor. However, the tax authorities have adopted a contrary position and have been holding that discount extended by the telecom companies to the prepaid distributors as commission and thus, provisions of section 194H would apply. This has resulted in long drawn litigation and multiple TDS for telecom companies and also distributors.	
87.	**Section 206C(1F) – to increase scope of TCS to all transactions of goods/services**	Section 206C(1F) provides for collection of tax @ 1% by seller from buyer in case sale consideration of car exceeds Rs 10 lakhs. Due to advancement of technology and digitization in economy and introduction of GST law, time has come now when the said provision of TCS can be extended to cover all goods and services transactions exceeding Rs 10 lakh subject to certain exceptions. This will bring a lot more people into the tax net and will also pave way for formalization of economy.	***It is suggested that section 206C(1F) be amended so as to include within its ambit all goods and services transactions exceeding Rs 10 lakhs excluding transactions on which TDS is applicable as well as Export transactions.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***

PART C-ADVANCE PAYMENT OF TAX

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
88.	***Section 208 - Revision of Limit of advance tax***	The Finance Act (No. 2), 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 said 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. 2,500 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. It is appreciable that the Finance Act, 2016 has provided for an exception to an eligible assessee in respect of an eligible business referred to in section 44AD to pay the whole of the advance tax in one go by 15th March of the financial year itself.	***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 may be allowed to pay full amount in the last instalment.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART G-LEVY OF FEE IN CERTAIN CASES

DETAILED SUGGESTIONS

<table>
<tr><th>Sr. No</th><th>Section</th><th>Issue/Justification</th><th>Suggestion</th></tr>
<tr>
<td>89.</td>
<td>Section 234E – Day wise slab</td>
<td>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.

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.</td>
<td>It is suggested to follow day wise slab system & it may be taken as:
<table>
<tr><th>Period of Default</th><th>Max. Fees u/s 234E</th></tr>
<tr><td>Upto 15 Days</td><td>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td></tr>
<tr><td>From 15 Days to 1 Month</td><td>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td></tr>
<tr><td>From 1 Month Onwards</td><td>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.</td></tr>
</table>
(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</td>
</tr>
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CHAPTER XX

APPEALS & REVISION

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
90.	***Section 246A – Necessary amendment required enabling filing of Appeal against penalty imposed by Assessing Officer under section 271J***	Section 246A provides that any assessee aggrieved by any of the orders mentioned therein may appeal to the Commissioner (Appeals). The Finance Act 2018 has amended clause (a) of section 253(1) so as to make an order passed by a Commissioner (Appeals) under section 271J also appealable to the Appellate Tribunal. This amendment is applicable from 1st April, 2018. **Issue:** The said amendment in section 253(1) allows an appeal to be filed before ITAT, if the order imposing penalty is passed by CIT(A). However, if the order is passed by Assessing Officer, the same would not be appealable either before CIT(A) u/s 246A or before ITAT u/s 253(1), thereby leading to denying principles of natural justice. This may be an unintended omission.	***It is suggested that necessary amendment may be made in section 246A so as to make an order passed by an Assessing Officer under section 271J appealable to the Commissioner (appeals) u/s 246A.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

CHAPTER XX-B

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

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
91.	***Section 269ST - Issues*(i)**	The expression, 'amount' has been used u/s 269ST whereas the expression 'sum' has been used u/s 271DA, which may create confusion and result in avoidable litigation.	***It is suggested that a uniform expression, 'amount' or 'sum of money' may be used at both the places i.e. under section 269ST as well as under section 271DA.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
	(ii)	In Note no. 83 of notes on clauses to the Finance Bill, 2017, the following amounts/ nature of transactions are excluded: - "Any receipt from sale of agricultural produce by any person being an individual or Hindu Undivided family in whose hands such receipts constitute agricultural income " This transaction has been inadvertently omitted from the list of exclusions in section 269ST.	***It is suggested that the above highlighted transaction as referred to in notes to clauses be excluded from the operation of section 269ST by suitably amending the proviso to section 269ST.*** ***It is also suggested that the benefit of the above exclusion be not restricted only to individual and HUF but also to other assessee's also who are deriving agricultural income only.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

CHAPTER XXI

PENALTIES IMPOSABLE

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
92.	***Section 270A inserted to provide for levy of penalty in case of under reporting of income and misreporting of income - Issues to be addressed*** ***a) Penalty order under section 270A be made an order appealable before Commissioner (Appeals) under section 246A***	The Finance Act, 2016 has inserted a new section 270A providing for penalty in case of under-reporting and misreporting of income. As per the provisions, the said penalty order under section 270A has not been made appealable under section 246A i.e., no appeal would lie against the penalty order under section 270A before the first appellate authority i.e., Commissioner (Appeals). Although an amendment has been made in section 253 providing for appeal to Tribunal against such penalty order, no such amendment has been made in section 246A. In a case where the said penalty order is imposed by an Assessing Officer below the rank of Commissioner, it is desirable that an appeal may be filed against the same to Commissioner (Appeals). It may be noted that the penalty order under the erstwhile section 271 is an appealable order under section 246A. There appears to be an inadvertent omission in not including an order under section 270A as an order appealable before Commissioner (Appeals) under section 246A.	***It is suggested that section 246A may be suitably amended so as to provide that penalty order under section 270A passed by Assessing Officer below the rank of Commissioner may be made appealable under section 246A before Commissioner (Appeals).*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
	b) Penalty for under-reporting of income	There are certain concerns arising out of the provisions of new section 270A, due to which it is likely that the implementation may not yield the desired result and fresh litigation is likely to arise while interpreting the new provision.	***Without prejudice thereto, with regard to this methodology of levying penalty, the following suggestions may be considered.*** ***• By way of express requirement, the Assessing Officer may be required to***

Sr. No	Section	Issue/Justification	Suggestion
			initiate the proceedings prior to or concurrently with the closure of assessment proceedings. Unless this is done, there may be initiation of penalty several years after the assessment proceedings are completed. The time limit under section 275(c) is, unfortunately, linked with the date of initiation of proceedings. *• Unlike Explanation 3 of section 271(1)(c), in this provision, where return of income is not furnished, penalty will be calculated with reference to tax on income assessed without considering the impact of tax deducted or advance tax paid by taxpayer. For example, in case of a person who is not required to furnish return of income under section 115A(5), tax may have been paid, but, as per new methodology, the whole of the income, as assessed, may be considered as unreported income. Such would also be the case in a situation where there is no revenue loss since the whole of the tax was already paid up and yet, the return may not have been furnished.* *• There may be some concern on resolution of the formula specified in the section if, intimation under section 143(1)(a) is not available. It may be good to clarify that, in such a case, returned income will be the substituted basis.* *• Penalty proceedings may be permitted only when specific conditions are satisfied. e.g.*

Sr. No	Section	Issue/Justification	Suggestion
			the adjustment made exceeds a minimum threshold or say 10% of taxable income, etc. ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	c) Order to specify the specific clause of under - reported or misreported income for levy of penalty under section 270A	Section 270A has done away with the undue discretion in the hands of Assessing Officer by imposing penalty at the rate of either 50% or 200% depending on whether the income is under reported or misreported. Certain controls may be required in the effective implementation of the new section. In order to reduce the practice of Assessing Officers treating every concealed income as misreported as well as the fact that the new section does not require recording of satisfaction before imposition of penalty proceedings (as was required under the erstwhile section 271), it is desirable that a suitable control mechanism may be put in place. Certain measures like making it mandatory for the Assessing Officers to mention in the Order that every disallowance or addition be specified as either under-reported or misreported. Further, measures like specifying the exact clause from sub-section (2) or (9) of section 270A, in case of under-reporting or misreporting of income respectively in the order would go a long way in reducing disputes and litigation. The said measures would also make it clear to the assessee in time whether he could opt for	***It is suggested that suitable amendments be introduced or alternatively administrative instructions may be issued so that each order contains the specific fact of either misreported income or under-reported income or both along with the mention of specific clause of section 270A(2)/(9) against each disallowance/addition. Such measures would act as a suitable control mechanism in the absence of recording of satisfaction to initiate penalty proceedings and would also enable assessee to opt for section 270AA providing for immunity from penalty and prosecution in case income is not misreported.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		immunity from penalty and prosecution under section 270AA in case order specifies that he has not misreported the income.	
	d) Mere making of a claim which is not sustainable in law would not tantamount to furnishing inaccurate particulars for attracting levy of penalty	Scope of penalty under section 270A has been widened and it would now include within its scope, claims made by the assessee but disallowed by the Assessing Officer. Where no information given in the return is found to be incorrect or inaccurate, and the assessee has disclosed all material facts relevant for assessment, he cannot be held guilty of furnishing inaccurate particulars. This principle of law has been settled by the Apex Court ruling in Reliance Petro Products' case. Therefore, mere making of a claim which is not sustainable in law would not tantamount to furnishing of inaccurate particulars for attracting levy of penalty. However, such cases are now to be included within the ambit of under reported income under the new section 270A and penalty would be attracted @ 50%.	***It is suggested that section 270A may be suitably amended so that penalty is not automatically attracted for merely making of a claim which is not sustainable in law.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
93.	***Section 270AA - Immunity from Imposition of penalty***	(a) Where penalty is levied on certain additions on ground of mis-reporting and certain additions on ground of only under-reporting than assessee will have to make a choice whether to file appeal or make application for immunity as he cannot file appeal on penalty levied on mis-reported income and immunity application for under-reported income.	***Suitable provision be inserted to solve this anomaly.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		(b) Also, there is no guarantee that appeal against quantum order with application for condonation of delay after rejection of application for immunity, will be admitted.	***Suitable provision may be inserted.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
94.	***Section 271AAB - Need to simplify penal provisions***	• Amended Section 271AAB provides for imposition of penalty @ 10% on undisclosed income found during the course of search and admitted at the stage of search subject to fulfilment of other specified conditions in section 271AAB(1A)(a) 60% penalty is to be imposed in other cases u/s 271AAB(1A)(b). • The above system of penalty is very complex to implement in reality. In search cases, penalty should ideally be the same irrespective of the time of admission/declaration by the culprit assessee. Assessing officers sometimes puts undue pressure on the assessees during search proceedings to extract the maximum amount of declaration. One of the reasons for the same is the pressure of target achievement by the assessing officers. • In such cases, quality of assessment suffers a lot and high-pitched assessments are made unnecessarily.	***It is suggested that the provisions of section 271AAB needs to be simplified. The time of admission may not be considered for imposition of penalty amount as once admitted all culprit assesses should be treated on the same footings.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
95.	***Section 271AAB - Penalty where search has been initiated***	Section 271AAB(1) (till 15.12.2016) 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	***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 (b) of section 271AAB(1A), and not in***

Sr. No	Section	Issue/Justification	Suggestion
		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 be imposed @ 60% of undisclosed income. Aforesaid provisions of section 271AAB are applicable till 15.12.2016 due to insertion of sub-section (1A) vide the Taxation Laws (Second Amendment) Act, 2016. Section 271AAB(1A) provides penalty @ 30% under sub-clause (a) and 60% under sub-clause (b). Sub-section (3) provides that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied under this section. 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 (b).	***respect of cases covered under clause (a).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
96.	***Rationalization of Section 271D & 271E***	As per section 271D & 271E, if a person accepts/repays a loan or deposit or specified sum/advance, 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	***It is suggested 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.*** ***(SUGGESTION FOR***

Sr. No	Section	Issue/Justification	Suggestion
		deposit. The penal provisions of section 271D & 271E may be restricted to 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.	***RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
97.	***Section 271FA - Clarity required regarding appealability of penalty order***	Section 271FA provides that if a person who is required to furnish the statement of financial transaction (SFT) or reportable account (RA) under section 285BA(1), fails to furnish such statement within the prescribed time, then the income-tax authority prescribed under section 285BA(1) may direct such person to pay penalty of five hundred rupees for every day of default. Prescribed Income-tax authority as per section 285BA(1) is Director of Income-tax (Intelligence and Criminal Investigation) {DIT} or the Joint Director of Income-tax (Intelligence and Criminal Investigation) as per Rule 114(4)(a). Further, section 246A(1)(q) provides that any assessee or any deductor or any collector aggrieved by an order imposing a penalty under Chapter XXI may appeal to the Commissioner (Appeals). Due to certain conflicting judicial decisions, an issue has arisen regarding the authority to whom an appeal shall lie in case of penalty order passed under	***It is suggested that an amendment be made in relevant sections (246A or 253) to clearly specify the authority to whom an appeal may lie against an order passed by DIT under section 271FA.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		section 271FA by DIT. As per *DIT v Ravi Vijay [2012] 25 taxmann.com 176 (Raj.)*, the Rajasthan High Court has held that an appeal against order of penalty passed under section 271FA by Director, who holds rank of a Commissioner, is maintainable before Commissioner (Appeals) with reference to section 246A(1)(q). Similar view is supported in *SRO, Meppayur-Kozhikode v DIT [2013] 37 taxmann.com 36 (Cochin - Trib.)* wherein it was held that where Director of Income-tax (Intelligence) levied penalty under section 271FA upon assessee, appeal against impugned order was not maintainable before Tribunal. Similarly, in *the District Co-operative Central Bank Ltd., R.R. Peta, Eluru, W.G. District v DIT ITA Nos. 576 to 578/VIZ/2018*, the Visakhapatnam Bench held that penalty order under section 271FA is an appealable order before CIT(A). However, Lucknow bench in *Raibareilly District Co-operative Bank Ltd. v DIT [2015] 54 taxmann.com 382 (Lucknow - Trib.)* held that appeal against an order of Director of Income-tax passed under section 271FA is to be filed before Tribunal who is higher in rank and not before Commissioner (Appeals) who is equivalent in rank with Director of Income-tax. The aforesaid view is also supported by the Hyderabad Bench in *the Nizamabad District*	

Sr. No	Section	Issue/Justification	Suggestion
		Cooperative Central Bank Ltd, Nizamabad v DIT ITA Nos.1291 to 1296/Hyd/2017, wherein it held that ITAT is not the forum to entertain the appeal against the penalty order under section 271FA. In order to reduce litigation with regard to this provision, clarification is sought on the aforesaid issue.	
98.	***Section 271H - Penalty for failure to furnish TDS/TCS statements***	The Finance Act, 2012 had inserted the penalty provisions under section 271H providing for penalty ranging from 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 law. 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, 31st July, 31st October, 31st January and 31st May, respectively for the quarters ending 30th June, 30th September, 31st December and 31st March. The TDS/TCS statements form the basis of preparation of annual tax statement in Form No 26AS. The deductee is required to confirm the exact tax deducted/collected at source and remitted to the Government by verifying Form No 26AS online, and thereafter pay the remaining taxes by way of self-assessment	***It is suggested that:*** ***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.*** ***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***

Sr. No	Section	Issue/Justification	Suggestion
		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 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. Therefore, it is felt that penalty provisions should be attracted if such statements are not filed before due date of filing return of income. 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.1,00,000 may lead to hardship to the assessee. 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.	***source, in respect of which the quarterly statement has not been filed.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
99.	***Genuine hardship faced by tax deductors on account of provisions of section 276B of the Income-tax Act, 1961 attracting prosecution proceedings for delay in remittance of tax to the credit of the Central Government***	Under section 276B, the consequence of failure to comply with the provisions of Chapter XVII-B is rigorous imprisonment for a term which shall not be less than three months, but which may extend to seven years and with fine. The provisions of section 276B are basically intended to discourage tax deductors from retaining the legitimate government dues unjustly. However, at ground level implementation, notices are being issued for initiation of prosecution proceedings under section 276B even in cases where tax deductors have deposited the tax deducted by them voluntarily after the stipulated time but before any notice has been served upon them. This may be due to the modified guidelines issued in 2013 for identification of cases for initiating prosecution, wherein the criterion of minimum retention period of 12 months has been dispensed with. However, initiation of prosecution proceedings in cases of voluntary deposit of TDS after the stipulated time but before service of notice is causing undue hardship to genuine tax deductors. Voluntary remittance of TDS before issue of notice clearly indicates the absence of any malafide intention on the part of the tax deductors to retain the taxes due to the government. The tax deductors are, in any case, being subject to higher interest @ 1.5% per month or part	***It is suggested that the matter may be looked into and appropriate measures may be taken so that prosecution proceedings under section 276B are not initiated against genuine tax deductors, who have deposited the TDS voluntarily after the prescribed time limit but before service of any notice by the department.*** ***Further, certain threshold limits may be prescribed to avoid genuine errors in estimations.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		of a month under section 201(1A) for the period of delay in remittance. The TDS statements submitted by them also clearly reflect the taxes deducted, the date of deduction and the date of remittance along with interest, which indicates the bona fide intent on the part of the deductors to report the correct details to the Department. However, it appears that the notices for prosecution are issued on the basis of these information provided by the tax deductors in their TDS statements. It is a settled law that prosecution proceedings are appropriate only in cases where deductors deliberately do not deposit the TDS, since Mens rea or a guilty mind is a sine qua non for attracting prosecution provisions. In this regard, it may be noted that the erstwhile service tax law which provided for a threshold limit of Rs.2 crores for initiating prosecution proceedings in case of failure to pay service tax collected to the credit of the Central Government within a period of 6 months from the date on which such payment becomes due. This implies that only if the service tax collected but not remitted within the prescribed period exceeds Rs. 2 crores, prosecution provisions would be attracted. However, section 276B of the Income-tax Act, 1961 neither prescribes any threshold limit beyond which the prosecution provisions thereunder	

Sr. No	Section	Issue/Justification	Suggestion
		would be attracted, nor does it prescribe any retention period, after the expiry of which, prosecution proceedings would be initiated. Thus, absence of threshold limit and retention period under this provision of the Income-tax Act, 1961 causes undue hardship even to genuine tax deductors.	
100.	***Section 276CC – Amendment w.r.t. clarification regarding inclusion of amount of advance tax paid and tax collected at source may be made applicable with retrospective effect***	The Finance (No. 2) Act, 2019 amended section 276CC so as to make the legislative intent clear and to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability. The aforesaid amendment is made applicable w.e.f. 01.04.2020. Since it is a clarificatory amendment as is clear from the Explanatory Memorandum, it should ideally be made applicable from a retrospective date so as to provide the benefit of clarification made to existing cases that are going on.	***It is suggested that the amendment in section 276CC made vide the Finance (no. 2) Act, 2019 w.r.t. calculation of tax payable to be determined after reducing tax collected at source and self-assessment tax be made applicable from a retrospective date being in the nature of clarification.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
101.	***Chapter XXII - Prosecution proceedings not to be imposed in case tax and interest paid***	In recent times, there is a spurt in prosecution proceedings under the Income-tax law. Prosecution proceedings are governed by Chapter XXII of the Income-tax Act, 1961. It causes some serious hardships to the concerned assessee. In case tax and due interest is paid, currently prosecution proceedings still	***It is suggested that in case tax and due interest is paid by the assessee under Income-tax Act 1961, then prosecution proceedings may be dropped subject to certain exceptions as may be appropriately specified.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		take place against the assessee although revenue is in no loss.	

CHAPTER XXIII

MISCELLANEOUS

DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
102.	***Section 288 - Appearance by Authorized Representative***	This section empowers an AR to appear before the any income- tax authority or the Appellate tribunal in connection with any proceeding under this Act. Under clause (2)(vii), any other person who, immediately after commencement of this Act, was an income-tax practitioner within the meaning of clause (iv) of sub-section (2) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), and was actually practicing as such.	***It is recommended that the clause (2)(vii) has become redundant looking at the age factor that the person may have obtained as on date.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
103.	***Request to consider amendment in Explanation to section 288(2) pertaining to definition of 'Accountant'***	We wish to bring to your kind attention the concerns of ICAI in respect of definition of 'Accountant' as provided in Explanation to section 288(2). The definition of 'Accountant' in Explanation to section 288(2) was last amended vide the Finance Act, 2015. The relevant extract of the amended Explanation to section 288(2) is as follows: *"Explanation.—In this section, "accountant" means a chartered accountant as defined in clause (b) of subsection (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—* ***(a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013*** *(18 of 2013); or* *(b) in any other case,—…………………"* {Emphasis provided} The reason for amending the definition of an "accountant" as per the Explanatory	***In view of the aforesaid, the definition of the term 'accountant' as per Explanation to section 288(2) of the Income-tax Act, 1961 may be modified suitably to remove the applicability of section 141(3) of the Companies Act, 2013 so that:*** ***a. A CA providing tax certification services to a company of which he is not the statutory auditor has the same opportunity to provide the NAS to a company as a CA who is not providing tax certification services but is providing tax advisory services and other NAS to a company of which he is not a statutory auditor to avoid unreasonable compliance requirements.***

		Memorandum to the Finance Bill 2015 was to avoid conflict of interest and for better governance. Infact, this amendment was brought in for the limited purpose of disqualifying a relative from conducting the tax audit report based on a CAG report finding. In case of an assessee, being a company, the disqualification for being appointed as an 'accountant' for tax certification services applies to the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of section 141(3) of the Companies Act, 2013. Relevant extract from section 141(3) is reproduced below: *"(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—* *………..* ***(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.*** *Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144."* {Emphasis provided} Considering the above, there is a possibility of two situations where a Chartered Accountant (hereinafter referred to as CA) in practice (individually or through a firm of CA) is called upon by a company to provide tax certification services as an "accountant". **A. Situation 1 – Where the CA is the statutory auditor of the company** From the governance perspective, as per section 144 of the Companies Act 2013, a statutory auditor shall provide to the company only such other services which are approved by the Board of Directors or the audit Committee. However, the statutory auditor cannot provide certain specified non-audit services (NAS) directly or indirectly to the company and entities	***b. Requirements prescribed for non-company assessees should be made applicable to company assessees to ensure parity in applicability of the eligibility requirements for being an 'accountant'. Further, term "Relative" as used in sub-clause (iv) and (vii) of clause (b) Explanation to section 288(2) may be replaced with "Immediate Family" Members as is used in the IESBA Code of Ethics.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

		related to it. It is pertinent to mention that the list of the prohibited services (NAS) by the statutory auditor of a company does not contain provision of taxation services including tax certification services. Therefore, there is no restriction on the statutory auditor to provide tax certification services subject to approval of the Board of Directors/Audit Committee under section 144 of Companies Act, 2013. **B. Situation 2 – Where the CA is NOT the statutory auditor of a company** In such a case, the CA can be appointed to provide the NAS, by the management on such terms as it considers appropriate as there is no restriction under the Companies Act 2013. **ISSUES FACED DUE TO RESTRICTIONS IMPOSED BY APPLICATION OF SECTION 141(3)(i) OF THE COMPANIES ACT, 2013** **I. Difference in scope of statutory audit and tax certification services** It is here that the amended definition of the term 'accountant" under explanation to Section 288(2) becomes more onerous than the original intention of the amendment made vide the Finance Act 2015, which as stated earlier, was for the limited purpose of disqualifying a relative from conducting the tax audit report based on a CAG report finding. Pursuant to the amendment to the definition of "accountant" under section 288, once a CA, who is not the statutory auditor of the company, is appointed (or is in the process of being appointed) to provide tax certification services as an 'accountant', he is being subject to the same service restrictions specified in section 144 of the Companies Act 2013 as the statutory auditor of the company although the scope of work of tax certification is much narrower than statutory audit {by virtue of applicability of section 141(3)(i) of Companies Act 2013 read with clause (a) of Explanation to section 288(2)}. The statutory auditor is required to	

		audit the whole of financial statements and opine as to whether the same present a true and fair view. However, opining on the financial statements as a whole is not required in case of issuance of a tax certificate/report by a non-auditor wherein the scope of enquiry is specific to the concerned provisions/sections of the Income-tax Act. However, the CA even in a case where the scope of service is limited to tax certification, is prohibited from providing other NAS specified in section 144 of the Companies Act 2013 which he could have provided but for section 288 of the Income-tax Act 1961. The aforesaid issue can be more clearly understood by way of an example as below: **Situation 1- Where the CA is issuing a CERTIFICATE under the Income – tax Act, 1961** As per Rule 37BB, a person responsible for making a payment exceeding Rs 5 lakh to a non-resident inter alia has to furnish Form 15CA (Part C) after obtaining a certificate in Form 15CB from an 'accountant'. Let's suppose a CA in practice (Mr. X) is appointed as an 'accountant' by a company 'A' to certify and issue Form No. 15CB (Certificate of an accountant) during a particular financial year. Since Mr. X is proving tax certification services as an 'accountant', Mr. X has to comply with the provisions of section 141(3) of the Companies Act, 2013 {due to definition of accountant in Explanation to section 288(2)}. In effect, Mr. X cannot provide any of the Non Audit services to company A as specified in section 144 of the Companies Act, 2013 (like accounting and book keeping services, internal audit services etc.) due to application of section 141(3)(i) of the Companies Act, 2013. Despite the fact that Mr. X is not a statutory auditor of the company A, he is being restricted from providing NAS as specified in section 144 of the Companies Act, 2013 {by virtue of	

		application of provisions of section 141(3)(i) of the Companies Act, 2013}. **Situation 2- Where the CA is providing TAX ADVISORY SERVICES** Continuing the above example, Mr. Z (a practicing CA) is appointed by company A to provide the tax advisory services in relation to a tax litigation cum assessment. Since Explanation to section 288(2) is not applicable to Mr. Z, he is free to offer Non audit services as specified in section 144 of the Companies Act, 2013 like accounting and book keeping services, internal audit services etc. Clearly, Mr. X (providing tax certification services) is at a disadvantage to Mr. Z (providing tax advisory services) although both of them are providing similar nature of services and none of them is the statutory auditor of the company A. It is discriminatory if a CA who is providing tax certification services to a company of which he is not the statutory auditor is subject to greater restrictions for provisions of NAS than a CA who is appointed to provide tax advisory (not tax certification services) to a company of which he is not the statutory auditor. It is pertinent to mention that the restrictions under section 141(3) are basically meant for the statutory auditor of the company so that the audit opinion is not influenced and auditor remains independent while performing the audit function. **II. Discrimination between company assessees and non-company assessees** In case of assessees other than company assessee, Explanation to section 288(2) prescribes the eligibility requirements only for the assessee and not for any other related entities. Further, there is no prohibition from providing other NAS specified in section 144 of Companies Act 2013. By making eligibility criteria for company assessees with reference to section 141(3) of Companies Act 2013, the	

		scope of restrictions has been broadened to extend to other related entities of the company as well as prohibition of NAS under section 144 of Companies Act 2013. A comparison of the restrictions as applicable to an accountant in the case of an assessee, being a company, and in the case of other assessees is quite clear from the bare perusal of explanation to section 288(2) of Income-tax Act 1961. The IESBA (International Ethics Standards Board for Accountants) Code of Ethics issued by IFAC (International Federation of Accountants) / the ICAI Code of Ethics distinguishes between audit services and non-audit assurance services. As there is no expression of opinion on the financial statements as a part of tax certification services, at best, such tax certification services would fall under "non-audit assurance services". In such situations, the personal independence prohibitions/restrictions are applicable to "assurance engagement team members". Further, NAS are subject to threats and safeguards, only if the NAS relates only to the subject matter of the assurance service i.e., tax certification. Given the nature of services, it would be prudent to apply "non-audit assurance" independence policies instead of "audit" independence policies.	
104.	***Computation of MAT profit in case of companies undergoing Corporate Insolvency Resolution Process under the Insolvency Code, 2016***	As per the extant provisions under section 115JB pertaining to computation of book profits for MAT purposes, the amount of profits of sick industrial company from the assessment year in which the said company had become sick industrial company under SICA, till the year in which the entire net worth equals or exceeds the accumulated losses, is reduced from the profit as shown in the profit and loss statement.	***The profits earned during the CIRP and the period during which the resolution plan is implemented should be excluded from 'Book profits' computed for MAT purposes.*** ***The amount of loan/liability waived and credited to profit and loss account should be reduced from the 'Book Profits' computed for the purpose of MAT.*** ***(SUGGESTION FOR***

			REDUCING/MINIMIZING LITIGATIONS)
105.	***Conversion of convertible notes into shares***	Section 47(x) exempts conversion of bonds or debentures or debenture-stock or deposit certificate in any form, into shares or debenture of that company, from capital gains tax liability. However, the conversion of Convertible Notes (CNs) issued by an Indian start- up into shares or debentures is not specifically exempted.	***Indian start-ups were allowed to issue CNs to resident individuals. RBI has permitted a person resident outside India to purchase CNs issued by an Indian start-up company for INR 25 lakhs or more in a single tranche (Notification No. FEMA.377/2016-RB, dated 10th January, 2017)*** ***To bring CN at par with other instruments, a specific exemption should be provided for its conversion into equity.***
106.	***Section 43CA, 50C and 56 – Allowance of variation of 5% between stamp duty value and the sale consideration – Increasing the permissible variation and need for retrospective amendment***	The existing provisions of section 43CA (business profits), 50C (capital gains) and 56 (income from other sources) while taxing income arising out of transactions in immovable property require adoption of the sale consideration or stamp duty value, whichever is higher. However, to minimize hardship in case of genuine transactions in the real estate sector, the Finance Act 2018 amended the said sections to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration. The Finance Act 2018 provided that in cases where the stamp duty value of immoveable property does not exceed 105% of consideration received/receivable on transfer of capital asset/stock in trade being land or building or both, consideration received/receivable shall be full value of consideration. Similarly, it provided that where the stamp duty value does not exceed 105% of consideration	*i.* ***The erstwhile provisions dealing with transfer of immovable property for lower consideration had delta of 15% and 25% respectively in section 52(2) and section 269C(2)(a) of the Act. The present delta of 5% is accordingly far too inadequate and may be increased to atleast 15%.*** *ii.* ***Also, since the amendment is rationalisation measure it may be made applicable from the date the provisions were inserted.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF***

		paid to acquire immovable property, there will be no trigger of taxation u/s 56(2)(x) of the Income-tax Act. **Issues:** i. In certain states, there is generally a significant/considerable difference between the stamp duty value/rate and the actual sale consideration and consequently in such cases gap between the two values is more than 5%. Hence, it is suggested to further increase the permissible variation. ii. The delta of 5% of consideration is highly inadequate as stamp duty value is determined as per area and not as per property. The circle rate may vary due to several reasons. iii. In the context of section 50C, Tribunals have adopted a view that where the difference between consideration and stamp duty value does not exceed 10%, provisions of section 50C are not applicable • Smt. Sita Bai Khetan vs. ITO (ITA No. 823/JP/2013) (delta of 10%) • John Fowler (India) Private Ltd v DCIT (ITA No. 7545/Mum/2014) (delta 10%) • Krishna Enterprises v ACIT [ITA No. 5402/Mum/2014) (delta 10%)	***DIRECT TAX LAWS)***
107.	***Exemptions – Skill Development***	Section 11 and 12 – Exemption of Income of specified public charitable and religious trusts At present, Skill development Program activity is not included with in the ambit of Charitable activities. The existing ambit of the law should include Institution exclusively engaged in "Skill Development programmes" of all kind and in the Research Activities. Income of such programme should be exempted in full. This will encourage more of institutes to do Skill Development Program activity and Research activity due to exemption of section 11 and 12.	***It is suggested to include institutions exclusively engaged in "Skill Development programmes" under the ambit of section 11 exemptions.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

108.	**Tracking the un-spent portion of capital gain deposit – Levy TDS at the time of withdrawal**	At present, there is no mechanism provided in the Act/Rules for tracking the un-spent portion of capital gain deposit. Only when the assessees want to withdraw the money (otherwise than for house construction), some banks insist on tax clearance certificate, while other banks simply make payment of the balance amount. The assessees are also finding it difficult to obtain the tax clearance certificate.	***It is suggested that the relevant rules/Act can be amended to provide that the un-spent amount can be released by the bank after deducting 20% thereof which can be remitted to the Government by way of TDS.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***

OTHERS

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
109.	***Issues arising from applicability of Companies Act, 2013 - Amalgamation***	a) Section 72A of the Income-tax Act, which deals with treatment of unabsorbed losses and unabsorbed depreciation, in case of amalgamation, is restrictive in its application. Presently benefits of Section 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.	***It is suggested that sectoral restrictions u/s 72A may be removed and provisions of this section be made applicable for all the sectors. (SUGGESTION FOR IMPROVING TAX COLLECTION)***
		b) Presently MAT credit u/s. 115JAA cannot be carried forward by the amalgamated company.	***The Income-tax Act needs to be amended so as to allow carry forward of MAT Credit in the hands of amalgamated company for remaining number of years.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

PART B

SUGGESTIONS FOR IMPROVING TAX ADMINISTRATION AND CITIZEN SERVICES

DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
110.	***Section 154 - 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 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. 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 assessees as well as the Government.	***It is suggested that section 154 may be amended so that rectification applications u/s 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 be treated as errors/omissions.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
111.	***Section 154/155(14) - Different Methods of accounting followed by the deductor and deductee – Rule 37BA***	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: i) ***Deductor– Mercantile system of accounting*** ***Deductee–Cash system of accounting*** 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	***Considering the aforesaid difficulties, it is suggested that section 154/155(14) be appropriately amended so that errors and omissions like non-claiming of TDS be included therein. Further, the aforesaid amendment being clarificatory in nature should be given retrospective effect so as to allow genuine taxpayers to claim credit***

Sr. No.	Section	Issue/Justification	Suggestion
		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. 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 in second and subsequent year in which amount is actually received. ***(ii) Deductor– Cash system of accounting*** ***Deductee – Mercantile system of accounting*** 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: 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 has	***of TDS in case not claimed in the return of income for any reason.*** ***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.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL***

Sr. No.	Section	Issue/Justification	Suggestion
		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.	***DIFFICULTIES RELATING TO DIRECT TAXES)***
112.	***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 medium assessees. 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.	***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 as an alternative Return system.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***
113.	***Time to bring an amnesty scheme on the lines of Sabka Vishwas (Legacy Dispute Resolution)***	During the last budget, Government has introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("SVLDRS") which is operational from 1st September,2019 till 31st December,2019. This scheme is introduced to resolve all disputes relating to the erstwhile Service Tax and Central Excise Acts [and rules made thereunder as well as 26 other Indirect Tax enactments.]	***It is suggested that considering the huge backlog in Indian Judiciary, the Government may consider brining in a similar scheme under income taxation law on the lines of Sabka Vishwas (Legacy Dispute***

Sr. No.	Section	Issue/Justification	Suggestion
	Scheme, 2019	A similar scheme was brought by CBDT in 2016 i.e. "Income "Declaration Scheme, 2016" (IDS) which was higly successful. Now the time has come to bring another similar scheme on the lines of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. A mjor difference between the IDS and SVLDRS is that under SVLDRS, the concerned assessee can approach High Court and Supreme Court in case of any further grievance whereas this option was not available under the IDS.	***Resolution) Scheme, 2019.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***
114.	***Tax consolidation Scheme***	***Background*** In India, separate entities are incorporated based on their specialization in various lines of businesses by the parent company. The group as a whole and the tax Department face many challenges. Some of them are:- • Each Entity is required to file a separate income tax return involving huge cost of compliance. • Each entity is assessed / scrutinised separately for intra-group transactions resulting in litigation cost for each entity. Significant administrative costs are incurred by the Income tax Department in keeping track of records and assessing multiple subsidiaries. • Apart from cost, a lot of efforts are required by both tax payer as well as Income tax Department for undertaking compliance. • Tax consolidation or combined reporting is a regime adopted in the tax or revenue legislation which treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes.	***It is suggested that government may consider introducing the concept of tax consolidation scheme considering the mutual benefits to both tax department and the assessees.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***

Sr. No.	Section	Issue/Justification	Suggestion
		Benefits – • Tax consolidation scheme would help to centralize the planning and payment of tax by the parent company. The company can set off the losses of one inter group company with the profits of another company. • Tax Consolidation will help in tax free movement of assets across the group which would aid in internal restructuring and optimum utilisation of resources. • The number of litigations pending with the tax department would also reduce and thereby reducing the administrative cost of the Income-tax Department. • The tax consolidation regime has been adopted in tax legislations of a number of foreign countries like Australia, France, Germany, Italy, Japan, Korea, Spain, USA etc. These countries have not only successfully implemented the said regime but also created a positive impact on business with significant reduction of compliance and litigation cost. • The tax consolidation regime also endorses the Government's efforts of "Ease of doing business in India" and assist in aligning the business and tax objectives of the industry.	
115.	***Need to reduce tax rate of partnership firms in line with corporate tax rate reduction***	Partnership Firms are taxed at 30%. Corporate tax rates are reduced to 25% and 22% subject to certain conditions. But partnership firms pay higher tax irrespective of turnover. Partnership firms taxation should be reduced to encourage starting new ventures where money need to be invested by one and intellectuals and expert people etc. If Government reduces tax, more business entities may come up. Now, for any amount earned 30% tax is forgone to business. Whereas for company it is not like that. To encourage small and medium enterprise this tax should be reduced immediately.	***Partnership firms having turnover up to certain limit can also be taxed on par with corporate. i.e. at 25% or 22%.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***

Sr. No.	Section	Issue/Justification	Suggestion
116.	***Rule 31 - TDS credit should be allowed solely on the basis of Form No. 26AS and procedural requirements for issuance of TDS certificates (Form No. 16 / 16A) should be dispensed with***	***Regulation in force*** Section 203 of the Act requires the deductor of tax to issue the TDS certificate to the deductee to the effect that tax has been deducted and specifying the amount so deducted. The deductor has to log in to the TDS CPC website and download the certificate of the deductee and then send such certificate to the deductee. The procedural compliance apparently looks easy and very convenient. However, in reality, the deductors and deductees face numerous difficulties in practically complying with the same. These difficulties are explained as follows: Practical difficulties faced by deductor Every quarter the deductor is required to login into the TDS Reconciliation Analysis and Correction Enabling System (TRACES) website and download TDS certificate for all the deductees and forward the same to each deductee. In case deductor is a big organisation which has deducted TDS for thousands of parties, it is required to send the TDS certificate through mail or post separately to each deductee. Issuing TDS certificate to thousands of parties every quarter poses challenges and also consumes lot of time which can otherwise be used for operations of the deductor. This sometimes leads to incomplete compliance or non-compliance with provisions of issue of TDS certificates. Though there are penal provisions provided under the Act for non-issuance of TDS certificate by the deductor, in practice the AO do not enforce those provisions. Practical difficulties faced by the deductee It is the deductee who actually suffers by way of denial of TDS credit in absence of TDS certificate and therefore, it is a must for the deductee to continuously chase each deductor	***It is suggested that TDS credit should be allowed purely on the basis of Form 26AS (irrespective of the fact whether the same has been claimed in the return or not) and the procedural requirement for issue or obtaining of TDS certificate in the Form 16A should be dispensed with. CBDT must ensure that this is implemented at ground level and AO grant TDS credit as per form 26AS and do not insist for production of Form 16A.*** ***Further, deductee be provided facility to download Form no. 16/16A himself instead of depending/waiting on deductor to issue the same.*** ***Also, generation of form no. 16/16A be made optional and not mandatory for the deductor. This will save huge amount of time and resources from deductor point of view.*** ***Currently, request is being placed by the deductor for downloading form no 16/16A which may be done away with and form 16/16A be available for download automatically without any request for the same.*** ***(SUGGESTIONS TO***

Sr. No.	Section	Issue/Justification	Suggestion
		for issue of TDS certificate. It may be relevant to mention here that the AO's do not always give TDS credit, especially for years in the past, on basis of Form No. 26AS appearing in the system but require hard copies of the TDS certificates. Section 199 of the Act and Rule 37BA of Income-tax Rules in relation to grant of TDS credit Conjoint reading of the Section 199 of the Act and Rule 37BA of the Rules framed thereunder suggests that credit for the tax deduction should be given/granted on the basis of information relating to deduction furnished by the deductor (i.e. Form 26AS) and the information in the return of income of the claimant. The requisite details in respect of the tax deducted at source are available in Form 26AS. The taxpayer may furnish the information relating to tax deducted at source in the return of income based on the details available in Form 26AS leading to inference that both the information furnished by deductor and information in the return of income are same i.e. as per Form 26AS. CBDT Circulars on issuing of TDS certificate The CBDT vide Circular No 3/2011 dated 13 May 2011 and Circular No 1/2012 dated 9 April 2012 has mandated for all deductors to issue Form 16A which is generated from TIN (Tax Information Network) website. • Further the CBDT in para 3 of Circular No 3/2011 specifically mentioned as under: "3. The Department has already enabled the online viewing of Form No. 26AS by deductees which contains TDS details of the deductee based on the TDS statement (e-TDS statement) filed electronically by the deductor. Ideally, there should not be any mismatch between the figures reported in TDS certificate	***REMOVE ADMINISTRATIVE DIFFICULTIES)***

Sr. No.	Section	Issue/Justification	Suggestion
		in Form No. 16A issued by the deductor and figures contained in Form No.26AS which has been generated on the basis of e-TDS statement filed by the deductor. However, it has been found that in some cases the figures contained in Form No. 26AS are different from the figures reported in Form No.16A. The gaps in Form No. 26AS and TDS certificate in Form No. 16A arise mainly on account of wrong data entry by the deductor or non-filing of e-TDS statement by the deductor. As at present, the activity of issuance of Form No.16A is distinct and independent of filing of e-TDS statement, the chances of mismatch between TDS certificate in Form No.16A and Form No. 26AS cannot be completely ruled out. To overcome the challenge of mismatch, a common link has now been created between the TDS certificate in Form No.16A and Form No. 26AS through a facility in the Tax Information Network website (TIN Website) which will enable a deductor to download TDS certificate in Form No.16A from the TIN Website based on the figures reported in e-TDS statement filed by him. As both Form No.16A and Form No.26AS will be generated on the basis of figures reported by the deductor in the e-TDS statement filed, the likelihood of mismatch between Form No.16A and Form No.26AS will be completely eliminated". • CBDT Instruction No. 4/2012 [F. No. 225/34/2011-ITA.II] dated 25 May 2012 states that "where the difference between the TDS claim and matching TDS amount reported in AS-26 data does not exceed Rs Five thousand, the TDS claim may be accepted without verification." CBDT Instruction 1 / 2012 dated 2 February 2012 and Instruction 2 / 2011 dated 9 February 2011 provides similarly. • CBDT Instruction No. 4/2014 [F. No.	

Sr. No.	Section	Issue/Justification	Suggestion
		225/151/2014/ITA.II] dated 7 April 2014 at para (5.2.a) reads "AO should verify whether TDS credits claimed by the taxpayer are available in the 26AS. If the credits are available in 26AS, a suitable rectification order......should be passed". • CBDT'S Action Plan for the First Quarter of FY 2015-16 dated 24 March 2015 refers to "....(b) Giving credit for prepaid taxes, reflected in Form 26AS post processing....". The above clearly demonstrates that there would not be any variation between TDS credit reflecting in the Form 26AS and TDS credit as per Form 16A. Further, in addition to these circulars, the CBDT in Central Actions plan of 2015 has also directed to give TDS credit on the basis of Form 26AS. Thus, reducing the relevance of Form 16A for the purpose of claiming TDS credit. It is requested that CBDT may call for details of cases in which TDS credit has been denied on the basis that credit was available on the basis of Form 26AS but not on basis of data in department's system. This would demonstrate that the CBDT instructions are not clear at the ground level. We also request that once again clear instructions may be reiterated to the field officers.	
117.	**Reconciliation of each payment made by deductor to avoid duplication of work of TDS return**	In order to make the process of claim of TDS error free, a system was devised some years ago in 2009 and published vide Circular no 2/2009, dated 21.05.2009. The relevant excerpt from the said circular is as follows: *"12. With a view to enabling the implementation of the aforesaid decision, the TDS and TCS payment and information reporting system has been redesigned vide Notification No. 858(E), dated 25th March, 2009 published in Official Gazette. The salient features of the new TDS*	***The mentioned circular is suggested to be implemented with appropriate modifications in light of the current technological advancements.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
		and TCS payment and information reporting system are the following:— *(i) The new system has been harmonized for all deductors (including Central and State Governments). Therefore, like non-governmental tax deductors, every deductor in the Central and State Government have also been made responsible for making direct payment of TDS in the bank. They are no longer allowed to make payments of the TDS and TCS by making book adjustments or consolidated payments. As a result, the TDS payment and information reporting system will be uniform across deductors.* *(ii) Rule 30 and Rule 37CA of the Income-tax Rules, 1962 have been substituted to provide, inter alia, for the following: —* *(a) All sums of tax deducted at source under Chapter XVII-B and of tax collected at source under Chapter XVII-BB shall, in general, be paid to the credit of the Central Government within one week from the end of the month in which the deduction, or collection, is made. Similarly, the same time-limit for payment will also apply for income-tax due under sub-section (1A) of section 192.* *(b) It is mandatory for all deductors (including Central Government and State Governments) to pay the amount by electronically remitting it into the RBI, SBI or any authorized bank.* *(c) It is mandatory for all deductors (including Central Government and State Governments) to make the payment by electronically furnishing an income-tax challan in Form No. 17.* *(iii) In the process of electronically furnishing the income-tax challan in Form No. 17, the deductor will be simultaneously required to furnish to the Taxpayer Information Network (TIN) system maintained by National Securities*	

Sr. No.	Section	Issue/Justification	Suggestion
		Depository Limited (NSDL) either through screen-based upload or file upload, three basic information relating to the deduction i.e., PAN, name of the deductee and amount of TDS/TCS. *(iv) Upon successful remittance of the TDS/TCS to Central Government account and the uploading of the basic information as mentioned above to the TIN system, every deduction record will be assigned a Unique Transaction Number (UTN).* *(v) NSDL will create a facility to e-mail the UTN file to the deductor if the e-mail address of the deductor is available with them. In addition, they will also create a facility for the deductor to download the UTN file.* *(vi) The UTN will be required to be quoted by the deductor on the TDS/TCS certificate issued by him to the deductee.* *(vii) NSDL will also create a facility to allow independent viewing of the UTNs by the deductee.* *(viii) With a view to enabling the Income-tax Department to monitor compliance by the deductor with the TDS provisions, every person (including Central Government and State Government) who has obtained a Tax Deduction or Collection Account Number (TAN) shall electronically furnish a quarterly statement of compliance with TDS provisions in Form No. 24C. It is mandatory for all TAN holders to furnish this form irrespective of whether any payment liable to TDS has been made or not. This form shall be furnished on or before the 15th July, the 15th October, the 15th January in respect of the first three quarters of the financial year, respectively, and on or before the 15th June following the last quarter of the financial year. This e-form No. 24C has to be furnished at http://incometaxindiaefiling.gov.in. The first*	

Sr. No.	Section	Issue/Justification	Suggestion
		quarter in respect of which Form 24C is required to be furnished is the quarter ending on 30th June, 2009. *(ix) In order to enable the deductor to furnish the UTN to the deductee, the existing Form 16 and Form 16A have been appropriately modified.* *(x) The quarterly returns of TDS and TCS hitherto required to be filed in Form No. 24Q, Form No. 26Q, Form No. 27Q and Form No. 27EQ shall now be required to be filed for all quarters on or before the 15th June following the financial year. Effectively, the quarterly returns have now been replaced by an annual return."* As is clear from the above reproduced para from the said circular, the proposed method will automatically verify each payment of TDS made by deductor and will reduce the duplicacy done while filing quarterly TDS statements. The above method will effectively lead to an annual TDS return instead of quarterly TDS statements currently.	

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PART C

SUGGESTIONS PERTAINING TO INTERNATIONAL TAXATION

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
118.	***Place of Effective Management (POEM)***	The Finance Act, 2015 amended the definition of a company resident in India under section 6(3) Of the Income Tax Act 1961. Indian companies have foreign subsidiaries carrying on business in the foreign country. There are cases where 100% shares may be held by Indian residents. In cases of dual residency, double taxation cases are high and criteria set for Poem is altogether complex for every industry. The concept of Poem is difficult to define and it is a matter of judgment whether Poem is in India or in foreign jurisdiction countries like USA also do not have Poem as the criterion to determine the residential status of a company.	***It is suggested to omit the concept of Poem from section 6 of the Act.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***
119.	***Provisions regarding indirect transfer of capital asset situated in India - Section 9***	The Finance Act, 2015 has amended provisions dealing with indirect transfer of capital asset situated in India. The amendment provides clarity on certain contentious aspects with regards to taxation of income arising or accruing from such indirect transfers. The following amendments have been introduced in the Act. • Share or interest in a foreign company or entity shall be deemed to derive its value substantially from Indian assets only if the value of Indian assets (whether tangible or intangible) as on the specified date exceeds the amount of INR 10 crores and represents at least 50 per cent of the value of all the assets owned by the foreign company or entity. • The value of an asset shall be its Fair Market Value (FMV). Subsequently, the CBDT notified the Rules prescribing the manner of computation of FMV of assets of the foreign company or entity and the reporting requirements by the Indian concern. • The date of valuation of assets (without reducing the liabilities) shall be as at the end of the accounting period preceding the date of transfer. However, in case the valuation of	• ***Since the objective of the amendment is to tax indirect transfer through shell companies, a listed company should not be considered as a shell or conduit company. The same was also suggested by the Shome Committee. It is recommended that exemption should be provided in respect of transfer of shares in a foreign company (listed on a stock exchange outside India) having substantial assets located in India.*** • ***Intra-group transfers as part of group re-organisations (other than amalgamation and demerger) should also be exempt from the indirect transfer***

Sr. No	Section	Issue/Justification	Suggestion
		assets as on the date of transfer exceeds by at least 15 per cent of book value of the assets as on the date on which the accounting period of the company/entity ends preceding the date of transfer, then the specified date shall be the date of transfer. • Exemption from applicability of the aforesaid provision has been provided in the following situations o Where the transferor along with its related parties does not hold (i) the right of control or management; (ii) the voting power or share capital or interest exceeding 5 per cent of the total voting power or total share capital in the foreign company or total interest in the entity directly holding the Indian assets (Holding Co). o In case where the Indian assets are not directly held, then if the transferor along with related parties does not hold (i) the right of management or control in relation to such foreign company or the entity; and (ii) any rights in such foreign company which would entitle it to either exercise control or management of the holding company or entitle it to voting power exceeding 5 per cent in the holding company. • The Finance Act, 2015 has introduced Section 47(vicc) in the Act which, subject to fulfillment of certain conditions provides that transfer of shares of a foreign company (which directly or indirectly derives its value substantially from shares of an Indian company) by the demerged foreign company to the resulting foreign company under a scheme of demerger will not be regarded as transfer. • The Indian entity will be required to furnish information relating to indirect transfers. The same has also been notified. In case of any failure, the Indian company will be liable for	***provisions.*** • ***While Explanation 5 to Section 9(1)(i) of the Act provides that shares of a foreign company which derives directly or indirectly its substantial value from the assets located in India shall be deemed to be situated in India. Section 47(vicc) of the Act provides exemption only if the shares of foreign company derive substantial value from shares of an Indian company. While the intent may be to exempt all cases of demerger where foreign company derives substantial value from assets located in India, the reading of Section 47(vicc) of the Act indicates that the said exemption would be available only in cases where the shares of the foreign company derive substantial value from shares of Indian company. Due to this inconsistency in the language of Section 47(vicc) vis-à-vis Explanation 5 to Section 9(1)(i), transfer of shares of a foreign company which derives its value***

Sr. No	Section	Issue/Justification	Suggestion
		a penalty of INR 5 lakhs or 2 per cent of the value of the transaction as specified.	***predominantly from assets located in India (other than shares of an Indian company) under a scheme of demerger may be deprived of the aforesaid exemption. It is recommended that Section 47(vicc) of the Act should be amended to provide that "any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly, its value substantially from the assets located in India, held by the demerged foreign company to the resulting foreign company, if,— ………………"*** ***It is suggested that a similar amendment should also be made under Section 47(viab) of the Act (in case of amalgamation).*** • ***Section 234A, 234B, 234C and 201(1A) of the Act should not be applied in cases where a demand is raised on a taxpayer on account of retrospective amendment relating to indirect transfer. An appropriate***

Sr. No	Section	Issue/Justification	Suggestion
			amendment should be made in the respective provisions of the Act. ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
120.	***Section 9(1)(i) - Benefit of non-applicability of indirect transfer provisions in case of Category I and II FPIs - Provisions for avoidance of double taxation in case of such indirect transfer provisions, where direct transfer has already been subject to tax***	The Finance Act, 2012 amended Section 9(1)(i) of the Act with retrospective effect from 1st April 1962 to provide that any share or interest in an entity incorporated outside India shall be deemed to be situated in India if such share or interest derives, directly or indirectly, its value substantially from assets located in India. The Finance Act, 2017 provided that the aforesaid deeming provisions shall not apply to an asset or capital asset mentioned in Explanation 5 of section 9(1)(i), which is held by a non-resident by way of investment, directly or indirectly, in a Foreign Institutional Investor as referred to in clause (a) of the Explanation to section 115AD and registered as Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992. The Finance Act, 2017 exempted investors (direct / indirect) in category I (sovereign funds) and category II (broad-based funds) FPIs from the application of indirect transfer tax provisions. The CBDT has, recently, issued a Circular No. 28/2017 dated 7 November 2017 clarifying that the indirect transfer provisions shall not apply to income arising to a non-resident on redemption or buy-back of shares held indirectly through specified funds, if such income is consequent to transfer of shares held in India by the specified funds and such direct transfer is taxable in India. The Circular applies to specified funds (VCF, Category I or II – AIF) and not to offshore funds in general. Further, the exemption will be restricted	***It is suggested that:*** ***While issuance of Circular no. 28/2017 is a welcome clarification for*** **non-residents in respect of redemption or buy-back of shares held indirectly through specified funds** ***(FPIs registered as Category -I or Category –II), in respect of other offshore funds the indirect transfer provisions may still lead to double taxation*** ***Therefore, a suitable amendment should be brought in to the effect that exemption is extended to all offshore funds (interalia Category-III FPIs) and should not be restricted to specified funds.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		to pro-rata share (of the non-resident) in the total consideration realized by the specified funds from the said transfer of shares or securities in India.	
121.	***Scope of Royalty Income - Section 9(1)(vi)***	**(a) Right to use a copyright vis-à-vis Right to use a copyrighted article** Internationally, as evidenced by OECD Commentary and opinion of eminent experts, the following two basic principles with regard to software payments are recognized and well settled: (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. (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 copyrighter holder are in the nature of business income and not royalty income. 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 ***TCS vs. State of AP (271 ITR 401)***. 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	***It is suggested that payments for copyrighted article like shrink-wrapped software as also payments made by distributors of software be specifically excluded from the definition of "royalty".*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		'Packaged Software /Canned Software' are in the nature of 'Goods' and the legislation also recognizes the same. 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'.	
		(b) Use of Standard facilities The Apex Court in CIT Vs. Kotak Securities Limited has clarified that the common services which are necessary for carrying out trading in securities for which transaction charges are paid, do not amount to technical services.	***In view of decision of Apex Court in CIT Vs. Kotak Securities Limited an exception should be carved out in Explanation 6 to Section 9(1)(vi) so as to exclude payments for use of standard facilities to the general public at large like payments for telephone service, internet service, cable television services and other similar services.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
		(c) Exclusion of packaged software from applicability of TDS under Section 194J of the Income-tax Act Circular No. 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 for sale'. This proposition has also been upheld in various judicial precedents like ***BDA Limited vs. ITO (TDS) 281 ITR 99 (HC Bom), CIT vs. Dabur India Limited (283 ITR 197)***	***To bring utmost clarity, it is also suggested that a specific amendment be made to Section 194J to exclude sale of software products from the ambit of tax withholding. In this regard, it is suggested that the following provision be included in Section 194J***

Sr. No	Section	Issue/Justification	Suggestion
		(HC Del). 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. 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 Income-tax 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 Software/Canned Software' would also help traders and boost ease of business. 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 Income-tax 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	***of the Act:*** ***<u>Amendment required</u>*** ***"194J. (1) Any person, …*** ***Provided that no deduction shall be made under this section—*** ***1. …*** ***2. …*** ***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."*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		payments of consideration for services is not "Royalty" for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the Income-tax Act and that such transaction are not liable for TDS under Section 194J of the Act.	
122.	***Explanation 5 to Section 9(1)(vi) – e commerce services***	• Explanation 5 to Section 9(1)(vi) has been introduced by Finance Act 2012 w.e.f. 1 June 1976 to clarify that royalty includes and has always included consideration in respect of any right, property or information, whether or not the right, property or information is used directly by the payer or is located in India or is in the control or possession of the payer. • Finance Act 2012 also brought in another retrospective amendment to the definition of the term 'Royalty' by introducing Explanation 6 to Sec 9(1)(vi) thereby enlarging the scope of the term 'process' to include transmission by satellite, cable, optical fiber or by any other similar technology, whether or not such process is secret. • The above amendments could be interpreted to bring within its ambit, payments made by Telcos to other domestic operators for services like interconnect, roaming, etc. Tax withholding on such payments would result in significant cash flow issues for Telcos. **Rationale** • As regards payments made to non-resident operators, a position may be taken that since the term 'process' has not been defined in the treaty, meaning of the same can be imported from domestic tax law for interpreting provisions of the tax treaty [relying on Article 3(2) of treaty read with section 90 and 90A of the Act]. The above would result in payments being made to foreign operators located in treaty countries also subject to tax withholding in India.	• ***In view of the above, it is recommended that revised definition is withdrawn to keep the definition as it was before the amendment by Finance Act*** • ***In a bid to fuel the highly competitive Telecom Industry as well as to bring in clarity, the Government should clarify that Explanations 5 and 6 should not be interpreted in a way to bring payments, whether made to domestic operators or international operators, for standardized telecom services including basic/ mobile telephony, internet, roaming, interconnect, etc. under the ambit of definition of 'Royalty'.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		• Treaty override - The term used in the treaty is 'secret process' whereas in the domestic law the term is 'process' and hence not pari materia. Any such interpretation would lead to treaty override since such position is not in line with principles of Vienna Convention of Law on Treaties and would be tantamount to unilateral rewriting of the treaty. • Non availability of tax credit– Without a corresponding amendment in the treaty, tax deduction due to amended definition of royalty under the provisions of the Act may not be treated as tax paid in accordance with the provisions of tax treaty. Accordingly, foreign government may refuse to grant credit of taxes withheld by Indian payer, resulting in double taxation for the payee. In the absence of clarity on the subject, foreign partners would increase the pricing by 10-15% with the Indian companies to factor in the impact of withholding tax. This would adversely impact the negotiating power of Indian telecom companies. • The SC court in a recent decision in the case of CIT vs. Kotak Securities Ltd. held that provision of standard service or facility should not be classified as technical services under section 9(1)(vii) of the Act.	
123.	***Tax withholding on transponder hire charges - Section 9(1)(vi) Explanation 6***	• Finance Act, 2012 amended the section 9 retrospectively to include payment for transponder hire and other charges as royalty w.e.f. 01.06.1976. • However these are not regarded as royalty under DTAA as definition of royalty in the DTAA remains same and has not been amended, which results in denial of tax credit of withholding tax/tax paid in India, to the Satellite Service Providers. • The contracts with Satellite Service Providers are on "net of tax" basis leading to 12-13% extra cost burden on Indian service recipients	• ***Clarification to be issued that Transponder hire charges are not "royalty" in order to avoid protracted litigation. Further, a clarification should also be issued that the definition of 'process' under the treaty should be read independently and the definition of 'process' under Section 9 of the***

Sr. No	Section	Issue/Justification	Suggestion
		(at the present level of WTH rate of 10%).	***Act should not be interposed in the treaty definition.*** • ***Various courts in India have held that such charges are not 'royalty' or FTS as these are standard services and involve no transfer of technology.*** • ***Even globally, OECD commentary also does not treat such payments as "royalty" or "FTS".*** • ***The Media Industry which includes the Satellite Broadcasting, DTH, HITS and Satellite News gathering (DSNG & VSAT) leases over 100 transponders on foreign satellites, which on a gross basis are priced at $190 Million dollars per year. Owing to the satellite transponder leases being treated as Royalty, which is not being held admissible for benefit of DTAA in different jurisdictions, the Indian industry is being forced to gross up the withholding tax levied in India, as the benefit of the same is not available to the foreign satellite provider in its country,***

Sr. No	Section	Issue/Justification	Suggestion
			despite having a DTAA with India. This leads to a gross up to the tune of $20 - $22 Million to be borne by Indian industry over and above the fees for transponders as the foreign satellite operators need to be paid on a net basis the price of the transponder use. This is putting an undue burden on the industry without any benefit to the Indian entity or the foreign satellite provider. This is also against the spirit of the DTAA. ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
124.	***Section 9(1)(i) Explanation 6(b)***	Section 9(1)(i) Explanation 6 (b) the value of an asset shall be the fair market value as on the specified date, of such asset without reduction of liabilities, if any, in respect of the asset, determined in such manner as may be prescribed; "specified date" means the— (i) date on which the accounting period of the company or, as the case may be, the entity ends preceding the date of transfer of a share or an interest; or (ii) date of transfer, if the book value of the assets of the company or, as the case may be, the entity on the date of transfer exceeds the book value of the assets as on the date referred to in sub-clause (i), by fifteen per cent. [EMPHASIS PROVIDED]	***To remove this double taxation, anomaly and hardship in such genuine cases, it is recommended that the provision be amended as follows:*** ***This provision should not be attracted where:*** ***(i) the Indian asset owned by the foreign company is sold between the specified date & the date of transfer of the shares of the foreign company and the Indian capital gains tax thereon***

Sr. No	Section	Issue/Justification	Suggestion
		This and connected provisions were brought on the statute book as an anti-avoidance measure to curb the practice of foreign companies changing control at significantly high value which decidedly came from Indian business and such structure was essentially adopted to avoid Indian capital gains tax. However, this provision is attracted even where there is no such intention. The definition of specified date being the date of the end of the latest accounting period prior to the date of transaction of transfer of the shares of the foreign company, particularly poses a problem. A Multinational company, which is reorganising or restructuring its global business may be doing so for a number of reasons, least of which may be connected with Indian taxation. Hence, even where such foreign company has already sold off its Indian subsidiary (or asset) separately to a third-party buyer just before transferring its own shares, it may still be liable to this indirect taxation because on the specified date it owned the Indian company (or asset). This provision is anomalous and results in double taxation in this situation since post the specified date, when the Indian asset is sold, the foreign company would have paid its capital gains tax in India. Yet, because such Indian asset was on its balance sheet on the specified date, the transfer of its share may still attract capital gains tax in India on account of indirect Indian asset transfer.	***is paid as applicable. NOTE: In view of the anti-avoidance provisions of sections 50CA and section 56(2)(x), avoidance of capital gains tax on sale of the Indian asset or shares at low value prior to the date of transfer of the shares of the foreign company is unlikely to happen. Hence this risk is avoided.*** ***(ii) The value contributed by the Indian asset to the foreign company has reduced by more than 15% between the specified date and the date of transfer of the shares of the foreign company,*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
125.	***Definition of Significant Economic Presence (SEP) for the purpose of business connection***	• SEP was introduced to tax non-resident entities conducting business through digital medium. • However, definition of SEP is not clear that it is applicable only to non-resident entities conducting business through digital medium.	***Considering the intent to tax digital business carried out by non-resident entities in India, the definition of SEP should be amended to restrict its applicability to business carried through digital medium.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF***

Sr. No	Section	Issue/Justification	Suggestion
			DIRECT TAX LAWS)
126.	***Introducing safeguards while applying Principal Purpose Test under the tax treaty***	India has adopted the minimum standard Article 7(1) of the Multilateral Instrument (MLI) which introduces Principal Purpose Test (PPT) in its tax treaties. PPT test is akin to the Indian General Anti-Avoidance Rules (GAAR). However, while introducing PPT (once MLI becomes effective), there are no safeguards provided under the Income Tax Act, 1961. In fact, GAAR provides additional safeguards like pre-approvals and process under GAAR-panel, etc.	***It is suggested that for the cases where PPT test under MLI is invoked, the Government should provide similar treatment as GAAR-safeguards. This will provide certainty to the foreign investors and will facilitate ease of doing business in India.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
127.	***Grandfathering of Principal Purpose Test application***	India has adopted the minimum standard Article 7(1) of the Multilateral Instrument (MLI) which introduces Principal Purpose Test (PPT) in its tax treaties. PPT test is akin to the Indian General Anti-Avoidance Rules (GAAR). GAAR provides grandfathering to the specified transactions entered into before 1 April 2017 (the date on which GAAR became effective). A similar grandfathering, however, is absent in case where PPT under the treaty is invoked. This creates uncertainty for past transactions once MLI becomes effective.	***Therefore, it is suggested that the Government should provide the grandfathering for the application of PPT test to the past transactions. This will provide certainty to the foreign investors and will facilitate ease of doing business in India.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
128.	***Carry forward of excess foreign tax credit***	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.	***It is suggested that assessees 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.*** ***(SUGGESTIONS FOR***

Sr. No	Section	Issue/Justification	Suggestion
			RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
129.	***Tax Sparing Credits***	Grant of tax sparing credits not dealt with in the notified Foreign Tax Credit Rules.	• ***Many treaties signed by India provide for tax sparing clauses under which India will give a deemed credit for taxes on exempt income in the source country. The notified Foreign Tax Credit Rules do not deal with such instances.*** • ***It is therefore submitted that with a view to avoiding potential issues surrounding the determination of the credit in absence of actual taxes paid abroad, it should be expressly clarified that tax sparing credit should be available based on a certificate of relevant authority of the overseas jurisdiction.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***
130.	***Disallowance for TDS defaults on payments to non-resident – Section 40(a)(i)***	In relation to section 40(a)(ia), Explanatory Memorandum to Finance (No.2) Bill 2014/CBDT Circular No. 1 of 2015 explained that disallowance of whole of the amount of expenditure in case of payments to residents for whom TDS is a merely mode of collection of tax and not discharge of final tax liability results into undue hardship for the	**In line with section 40(a)(ia) of the Act, it is recommended that s.40(a)(i) should also be amended restricting the disallowance to 30 percent of the amount of**

Sr. No	Section	Issue/Justification	Suggestion
		taxpayers and accordingly, s.40(a)(ia) is amended to restrict disallowance only to 30% of the expenditure amount. Thus, disallowance should be in proportion to the TDS rates which apply to residents which ranges from 2% to 30%. However, similar changes are not made in section 40(a)(i) which governs the non-deduction of TDS on payments to non-residents. It may be noted that TDS rates applicable to majority of payments to non-residents by way of interest, royalty and FTS also are in the range of 5% to 10% which are also final tax payable by non-resident payees. Disallowance of 100% of expenditure involving payments to residents effectively results in recovery of 30% tax by the Revenue from the payers whereas the final tax payable by non-residents is only in the range of 5% to 10%.	**expenditure.** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
131.	***Cross-border merger***	**Exemption from Capital gains** A transaction of amalgamation, where the amalgamated company is an Indian company, is exempt from capital gains tax liability. Further, in case of an inbound merger, the capital gains arising to the shareholders of the amalgamating company is also exempt. Similar tax exemption is not available to the amalgamated company or its shareholders in case of an outbound merger. **Exposure to a permanent establishment (PE)** Post an outbound merger, the assets, liabilities and employees of the amalgamating Indian company may continue to physically exist in India. This may create a PE exposure for the amalgamated foreign company. In that event, business profits attributable to the foreign amalgamated company's PE in India will be liable to tax at the rate of 40% (plus applicable surcharge and cess).	***The merger of an Indian company with a foreign company in a specified jurisdiction is now permitted as per section 234 of the Companies Act, 2013 r.w. Rule 25A of the Companies Merger Rules.*** ***The FEMA Merger Rules have also been amended to permit an outbound merger, subject to conditions. One such condition is that a foreign company can acquire and hold only certain assets in India which are permitted under the relevant FEMA regulations for the acquisition of property in India.*** ***Such cross-border mergers would not be attractive till the time there exists tax liability or ambiguity***

Sr. No	Section	Issue/Justification	Suggestion
			around taxability for such transactions. The income tax provisions, therefore, need to be aligned with corporate law and FEMA to achieve the objective of increasing the ease of winding up operations in India. *The following tax treatment is recommended for consideration:* *Removal of a condition specified in section 47(vi):* • *The condition that the amalgamated entity should be an Indian company for claiming exemption from capital gains tax arising on transfer of the undertaking should be removed.* *No taxability for the shareholders of the amalgamating company.* • *The shareholders receiving shares of the foreign amalgamated company should not be subject to capital gains.* *Relaxation of a condition specified under section 2(1B)* • *Due to restrictions in FEMA Regulations, ALL assets and liabilities pertaining to the undertaking may not be transferred to the amalgamated foreign company. Considering the impossibility of*

Sr. No	Section	Issue/Justification	Suggestion
			performance, the condition for transfer of all assets and liabilities of the undertaking as required under section 2(1B) should be relaxed. *Clarity on 'Business Connection' under section 9(1)(i):* *• Post amalgamation, the foreign amalgamated company would carry on business in India. A specific provision could be added to the definition of 'business connection' under section 9(1)(i). This would bring clarity to future taxability of the foreign amalgamated entity.* *Transfer of carried forward losses and unabsorbed depreciation under section 72A.* *• The carried forward business losses and unabsorbed depreciation of the amalgamating Indian entity should be available to the permanent establishment of the amalgamated foreign entity.* *(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)*

Sr. No	Section	Issue/Justification	Suggestion
132.	***Master File Regulations***	a) The threshold for applicability of master file regulations has been kept at consolidated group turnover of INR 500 crore accompanied with aggregate international transaction(s) of INR 50 crore. This is significantly lower than the OECD recommendations/global trend. This has brought a lot of mid-sized taxpayers into the net of master file compliance, increasing the compliance burden on them.	***The threshold should be aligned with that for CBCR***. ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
		b) Section 92D(1) first proviso r.w. rule 10DA – Master File – Constituent Entity of International Group to file form 3CEAA i.e. Master File. This requirement is inserted as a proviso to section 92D(1) which requires every person who has entered into international transactions to keep and maintain information and documents in respect of international transactions. On the basis of rule of interpretation that the proviso is to be read in continuation of the main section, it is understood that the requirement of first proviso applies when: • there are associated enterprises having international transactions • there is group and international group • there is constituent entity of international group (These terms are defined in section 286(9). On the basis of plain reading of the definitions of “associated enterprises”, “International Group”, “Group”, “Constituent Entity”, it can be understood that various situations like following examples can arise. Example ABC India, ABC USA and ABC Japan are having relation in such a manner that it can be terms as a group and international group as per the definitions given in section 286(9). Requirements of preparing CFS and inclusion in CFS are the theme of the definitions of group, International Group and Constituent Entity. Now ABC UAE is company owned by the promoters of ABC India. This means that ABC UAE is associated	**Provisions related to applicability of additional documentation requirements for transfer pricing cases into the Income Tax Act shall be aligned to the provisions of applicability of transfer pricing provisions in the Income Tax Act.** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		enterprise of ABC India but not the part of International Group as defined under section 286(9) relevant clause. Now let us assume that there are international transactions between ABC India and ABC UAE but no such transactions between ABC India, ABC Japan and ABC UAE. This means there are no international transactions within the international Group. However, still there exist : • International Transactions between associated enterprises • International Group • Constituent Entity of International Group. But the international 180 standardized are not with the entity which is part of international group. Confusion exist whether in such cases, the master file reporting is required to be done? Also whether the entity which is associated enterprise but not part of the international group shall be included in the form 3CEAA? Before budget, 2016, documentation and reporting were limited to International Transactions. OECD (Organization of Economic Co-operation and Development) has issued report on 15 BEPS Action Plans. The OECD report on Action 13 of BEPS Action plan provides for revised standards for transfer pricing documentation. It is recommended in the BEPS report that the countries should adopt a 180standardized approach to transfer pricing documentation. India has Implemented these suggestions by inserting first proviso to section 92D(1) and Section 286. However, the applicability criteria for these new documentation requirements might not cover all the cases where transfer pricing regulations (International Transactions at ALP) applies. This might keep large number of cases where transfer pricing applies out of the ambit of additional documentation requirements.	
133.	***Reporting of issuance of***	Clause 16 of the Form 3CEB requires the reporting of particulars in respect of the purchase	***In view of* Vodafone India Services Pvt. Ltd. vs. UOI**

Sr. No	Section	Issue/Justification	Suggestion
	Share Capital Transaction in Form 3CEB	or sale of marketable securities, issue and buyback of equity share, optionally convertible/ partially convertible/ compulsorily convertible debentures/ preference shares. Bombay High Court in the case of "Vodafone India Services Pvt. Ltd. vs. UOI (Dated – 10th October 2014)" has held that Chapter X of the Income Tax Act 1961 i.e. Transfer Pricing Provision does not apply on any transaction involving issue/receipt of share capital money (including issued on premium) as no income/expense will arises from such transaction. Government of India in its PIB dated 28th January 2015, has accepted the order of Bombay High Court in the case of Vodafone and came to the view that the transaction involved is on capital account and there is no income to be chargeable to tax. So, applying any pricing formula is irrelevant. However even after the acceptance of the Bombay High Court Judgment by Government of India, Share Capital transaction is still required to be reported /justified in Form 3CEB.	**(Dated – 10th October 2014)" and PIB dated 28th January 2015 issued by CBDT, it is suggested that clause 16 of *Form No. 3CEB should be amended so as clarify that share Capital transaction is not required to be reported /justified in Form 3CEB.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
134.	***Advertising Marketing & Promotion Expenses (AMP)***	From last many years, companies advertising foreign brands in India are been scrutinized in TP audits, for the AMP expenditure made by them. On this issue large TP adjustments are being made. This has led to litigation between the companies and TPOs resulting in the disallowance all marketing expense and the same is been challenged in higher authorities. Still after several cases been disposed by the High Court and the Appellate Tribunals, there is no clear resolution to this issue and it is still one of the most litigated TP issues before the courts.	***It is suggested that clarifications be issued in respect of AMP expenditure made by companies advertising foreign brands in India so that litigation can be avoided.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
135.	***Permissible variation available in case of Single comparable used determining the arm's length***	The second proviso to Section 92C(2) of the Act permits a variation between arm's length price so determined and price at which International Transaction or Specified Domestic Transaction has actually been undertaken. The amended proviso of section 92C(2) of the Act,	• **It is recommended to clarify by way of an amendment or a circular that considering the revised proviso the benefit of variation from transfer price is**

Sr. No	Section	Issue/Justification	Suggestion
	price	clearly allows the assesse a benefit of availing the permissible variation even if single price is determined as an arm's length price. Further permissible variation applies for the difference between the 'Arm's length price so determined' and the price at which the international transaction/SDT is actually undertaken and not from the "arithmetic mean" in the pre amended proviso. The amended proviso as it stands now nowhere mentions that the term "arithmetic mean" as a precondition for availing the permissible variation benefit. However, there is still an ambiguity in the interpretation as to availability of the permissible variation where single comparable is used in determining the arm's length price. The ITAT has given conflicting rulings on the issue and this is leading to unnecessary litigation.	**available even in case of single comparable. It will reduce the litigation, which is one of the agenda items of the existing government.** • **The above recommendations are also in line with the observations of Hon'ble Income Tax Appellant Tribunal in the case of The Development Bank of Singapore (ITA No. 6631/Mum/2006) and in the case of Reliable Cashew Co.** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
136.	***Section 92C(2) and Rule 10 CA - Range concept***	Arm's length range is the 35th to 65th percentile of the dataset. Globally, arm's length range is the Inter quartile range (25th to 75th percentile of the dataset). This is practiced in most of the countries, for eg. US, Canada, UK, etc.	• ***The arm's length range in India be aligned with the globally accepted inter quartile range of 25th to 75th percentile of the dataset.*** • ***It will reduce the compliance cost for the Assessee as a benchmarking from one country perspective can be applied from the other country perspective as well.*** ***(SUGGESTION FOR RATIONALIZATION OF***

Sr. No	Section	Issue/Justification	Suggestion
			THE PROVISIONS OF DIRECT TAX LAWS)
137.	***Tolerance Band – Second proviso to section 92C(2)***	By Finance Act 2012, the Government notified that the flexibility of the range as was provided in the second proviso to Section 92C(2) cannot exceed 3 percent. In case where the arithmetic mean is adopted to compute the arm's length price (as an alternative to adopting the identified range as introduced in Finance (No 2) Act 2014), limiting the tolerance band to 3 percent (1 percent for wholesalers) is extremely restrictive.	• ***The tolerance band be restored to the earlier limit of 5 percent.*** • ***The arithmetic mean is used as an alternative where range concept is inapplicable. Allowing higher tolerance band will provide better flexibility.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
138.	***Mutual Agreement Procedures (MAP)***	MAP provisions as agreed in the respective tax treaties were discussed several years ago and the same needs to be relooked at in light of the changing dynamics of business environment in India and globally. Accepting bank guarantee will make MAP more effective for resolution of tax disputes, irrespective of jurisdiction involved. US, UK and Denmark are some of the jurisdictions where an option is available to the tax payer to provide bank guarantee for the tax demand.	• ***The law may provide that where a MAP application has been preferred, the demand may be stayed on furnishing of bank guarantee or other security till completion of MAP process.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
139.	***Section 92CE - Introduction of secondary adjustment***	The Finance Act, 2017 introduced the concept of secondary adjustment on Transfer Pricing (TP) adjustments. A taxpayer is required to make a secondary adjustment, where the primary adjustment to transfer price has been made in the following situations: - • Suo moto by the taxpayer in the return of income; • By the AO during assessment proceedings, and has been accepted by the taxpayer; • Adjustment determined by an Advance Pricing Agreement (APA) entered into by the taxpayer;	***Sub-sections (1), (2) and (3) need to be revisited to streamline and appropriately link up the three sub-sections to provide adequate clarity as to the specific requirements from the taxpayers on this front.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		• Adjustment made as per the safe harbour rules under section 92CB; or • Adjustment arising as a result of resolution of an assessment by way of the mutual agreement procedure (MAP) under an agreement entered into under section 90 or section 90A for avoidance of double taxation. Further, the section 92CE(3)(v) defines 'Secondary adjustment' as an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price ***determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual p***rofit of the assessee. The additional amount receivable from the AE as a result of the primary adjustment should be repatriated by the taxpayer into India within a prescribed time limit. If the same is not received by the taxpayer within the time-limit, then the primary adjustment will be deemed as an advance extended to the overseas AE and a secondary adjustment in the form of notional interest on the outstanding amount should also be offered to tax as an income of the taxpayer. The above requirements for repatriating the adjustment amount into India and imputing a notional interest are triggered if the TP or primary adjustment exceeds rupees one crore. The manner of computation of interest on the amount deemed as advance made by the taxpayer to the AE would be prescribed. The situation of excess payment treated as loan given to AE on which notional interest in computed and added to the income of the assessee till the excess amount is repatriated by AE.	

Sr. No	Section	Issue/Justification	Suggestion
		It would be difficult for AE to repatriate the money to India on account of secondary adjustment as the income-tax laws and any other relevant laws pertaining to such country may not allow to repatriate money. Further the AE would have paid tax on such amount in its home country. This would lead to double taxation. This would lead to double taxation. Further, the same cannot be treated as advance in the books of account maintained in India as the books of account are prepared as per the provisions of Companies Act, 2013 read with Indian Accounting Standards. (i) Sub-section (1) of the proposed section 92CE provides for secondary adjustments to be made in respect of primary adjustments in certain situations. The phrase "secondary adjustment" has been defined in Clause (v) of Sub-section (3) to mean an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price as determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. Sub-section (2) lays down the requirement for excess monies to be repatriated to India and for interest to be levied thereon, if not repatriated within the prescribed time. However, Sub-section (2) does not refer to 'secondary adjustment' as envisaged under Sub-section (1) and defined in Clause (v) of Sub-section (3). The absence of references to Sub-section (1) and/or 'secondary adjustment' in Sub-section (2) results in an apparent disconnect between Sub-sections (1) and (2) which may have unintended consequences.	
	(ii)	In respect of Unilateral APAs that have been entered till date, there was no provision relating to secondary adjustments in the statute. As a result, APAs have been concluded wherein terms that are not consistent with the Section 92CE have been imposed on taxpayers. In view of a	***A specific clarification should be issued under the APA Rules as well as in Section 92CE that the consequences for a delay in bringing money into***

Sr. No	Section	Issue/Justification	Suggestion
		specific provision having been introduced, taxpayers should be entitled to follow the mandate of Section 92CE in respect of APAs signed till date.	***India pursuant to a unilateral APA would be only under Section 92CE(2) and the APA would not be disqualified merely on this account.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
	(iii)	Clause (ii) to sub-section (1) of the section 92CE provides that a taxpayer is required to make a secondary adjustment where primary adjustment to transfer price has been made by the AO during assessment proceedings and has been accepted by the taxpayer. There is lack of clarity on what exactly the term 'has been accepted by the taxpayer' means.	***Government should clarify the term 'has been accepted by the taxpayer' in order to provide certainty on the applicability of these provisions in such situations. For e.g. if the taxpayer is in appeal against the assessment order to Tribunal, in such cases, will secondary adjustment provisions be applicable only after the Tribunal proceedings are completed or the same will be applicable after Court proceedings are completed i.e. if the taxpayer further appeals to High Court/ Supreme Court.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
	(iv)	Since adjustments are made subsequently when returns are taken up for scrutiny, any requirement to make secondary adjustment would depend upon whether the Associated Enterprise is willing to accept the secondary adjustments to be made in its books abroad. Non-acceptance of the same will lead to inter-company issues during consolidation. It could also require restatement of financial statements of an Indian entity if adjustments are material.	***The said issues may be considered and appropriate remedial measures may be incorporated to avoid genuine hardship.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		This in turn might lead to filing of revised returns. Implication on shareholders value and lenders agreement (where there are borrowings) would need to be evaluated besides implications under the Companies Act, 2013. Further, FEMA requires money to be remitted within 6 months from the end of the accounting year. Also, if the Associated Enterprise (AE) located abroad does not pass entries in the books, inter-company adjustments/eliminations could be a challenge if the AE is a holding company.	
	(v)	Applicability of section 92CE has to be restricted only to cases satisfying the base erosion test. The provisions, as presently worded, may give rise to an interpretation that even where the primary adjustment is made in the hands of non-resident, secondary adjustment follows. As a consequence, it may be interpreted as allowing repatriation of funds outside India, which may not be permitted even in terms of FEMA/ RBI regulations.	***In order to remove this anomaly it is recommended that section 92CE(2) be amended to clarify that the section applies only in case where the primary adjustment is made in the hands of the Indian AE.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
	(vi)	Section 92CE deems the difference between the transaction price and arm's length price as an advance (which is to be recorded in the books) and provides for imputation of interest on such advances. However, there is no specific provision to reverse the advances appearing in the books even in case where the AE relationship ceases to exist or in case where the excess money is repatriated.	***It may be specifically provided that the advances appearing in the books of the parties be reversed in following cases where AE relationship ceases to exist, or excess money is repatriated.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
	(vii)	**Constructive loan v/s constructive dividend** • Primary adjustment to the income of an Assessee dealing with a foreign AE is treated as interest bearing loan given to the AE, if the amount of money equivalent to the adjustment is not repatriated within the time limits prescribed in Rule 10CB and interest at	• **It is recommended that the provisions of secondary adjustment be amended to treat excess profits in the hands of the foreign AE as equity contribution or deemed dividend, at the**

Sr. No	Section	Issue/Justification	Suggestion
		prescribed rate is imputed on said deemed loans. • Further, adjustments in books of accounts of the Assessee and its foreign AE are required to reflect actual allocation of profits between the Assessee and its AE which is consistent with transfer price determined as a result of primary adjustment. • As per OECD Transfer pricing guidelines, secondary adjustment may take the form of constructive (or deemed) loan/ dividend/ equity contributions. • Most countries follow the constructive dividend approach, for example, USA, Korea, Germany, France, and South Africa. The most significant advantage of constructive dividend is that it is one time event without a carry-forward impact on future years, unlike the loan approach, where it may remain in place for several years if not acknowledged by AEs. • Repatriation of profits may not be feasible as AE relationship may cease to exist when the primary adjustment attains finality. The AE relationship may cease to exist on account of liquidation/winding up of AEs, or transfer of the AE to another entity. Alternatively, remittance of money on account of primary adjustment attaining finality may not be possible due to restrictions of the Central Bank in the jurisdiction where the AE is incorporated. • Most countries that apply secondary adjustment do not recognize deemed loan approach, many countries do not have secondary adjustment legislation at all. Therefore, the deemed loan approach is likely to increase the risk of double taxation.	**option of the Assessee. Deemed dividend can be brought to tax in the hands of the recipient (Assessee).** • **It is also recommended that the cumbersome requirement of adjusting the books of accounts of the Assessee in India as well as the overseas AE, should be done away with, as the foreign AE may be prohibited to make adjustment in books by local laws of its country of incorporation.** • **It would ease the burden on the Assessee to repatriate the adjusted amounts.** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
	(viii)	**Time limit for secondary adjustment** • The time limit prescribed under Rule 10CB for repatriation of excess money is 90 days from the due date of filing of return under sub-section (1) of section 139 of the Act in the case of agreement for advance pricing entered into by the Assessee under section 92CD. • The APA negotiation process usually takes 2-3 years or even more. The due date of return under section 139(1) of the Act in respect of couple of initial years covered under the APA has expired by the time the APA is concluded. • This would result in secondary adjustment for most of the companies under the APA even though the APA program requires the Assessee to file modified return of income in respect of covered past years.	• **It is recommended that the time limit prescribed under rule 10CB, in respect of primary adjustments made consequent upon entering into an APA, be set to 90 days from the signing of the APA or the due date of filing of return of income u/s 139(1) of the Act, whichever is later.** • **It would ease the burden on the Assessee under the APA program** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
140.	***Advance Pricing Agreements (‘APA’)***	• The guidelines provide for conducting the assessment proceedings simultaneously, during the pendency of APAs. • This may result in duplication of time and effort of TPO and Assessee, once APA is concluded.	• **It is recommended the transfer pricing proceedings be kept in abeyance till the conclusion of the APA, qua covered transactions. In case on conclusion of the APA, the modified returns could be summarily scrutinized. In case the APA proceedings fail, the assessment proceedings can be revived for the proposed covered transactions. The period between date of filing of APA application and date for signing of the APA can**

Sr. No	Section	Issue/Justification	Suggestion
			be excluded for the purposes of computation of the limitation. • **Ease the burden on the Assessee and the Tax Authorities** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
141.	***Rollback of APA***	The CBDT introduced the rollback rules under the APA program on 14 March 2015. There were some ambiguities about the implementation of the rollback rules, and therefore, CBDT issued Frequently Asked Questions (FAQs) clarifying certain issues. In this regard, some of the aspects that need to be further addressed are as under: The international transaction proposed to be covered under the rollback is to be the same as covered under the main APA. The term 'same international transaction' implies that the transaction in the rollback year has to be of the same nature and undertaken with the same AEs, as proposed to be undertaken in the future years and in respect of which APA has been reached.	***It is recommended that this provision should be relaxed to the extent that the taxpayers with similar transactions with no substantial changes in the functional, asset and risk profile should be allowed to take benefit of this provision. Further, if the same/ similar transaction is undertaken with another AE, the benefit of rollback should be provided.*** ***Thus, it is recommended that the provision should be made applicable to similar nature of transactions and with different AEs.*** ***Further, the rules provide that if the applicant does not carry out any actions prescribed for any of the rollback years, the entire APA shall be cancelled.*** ***It is recommended that this provision should be relaxed and should not result in the***

Sr. No	Section	Issue/Justification	Suggestion
			cancellation of the entire APA. ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
142.	***Dispute resolution***	The Indian APA authorities have been refusing to accept applications for bilateral APAs from countries like Germany, France, Singapore and Italy as the Double Taxation Avoidance Convention (DTAC) of India with these countries do not contain Article 9(2) which provides for corresponding adjustment to be allowed to the taxpayer for any economic double taxation that arises on account of transfer pricing adjustments. The OECD has in its commentary given two options if such an issue arises: The Article 25 on Mutual Agreement Procedures in various DTACs covers such instances of allowing a corresponding adjustment for TP, hence bilateral APAs should be allowed, or the countries (like India) that do not agree that Article 25 of DTACs cover corresponding TP adjustments, should make unilateral changes in their regulations to allow such adjustment.	***India may introduce a clarification, giving effect to the point 2 above, to enable taxpayers from the countries like Germany, France, Singapore and Italy to file for bilateral APAs.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
143.	***Section 94A - Special measures in respect of transactions with persons located in notified jurisdictional area***	One of the tax consequences of a country or area being notified as NJA is that payments to persons located in that NJA would be subject to a higher withholding @ 30%. The relevant provision which provides for this implication i.e., section 94A(5), would be applicable notwithstanding anything to the contrary contained in the Act. Section 206AA which provides for higher withholding @ 20% in absence of PAN of payee is also applicable not withstanding anything to the contrary contained in the Act. Though the intent appears to be that section 94A would override section 206AA, there may be some difficulties in interpretation.	***Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
144.	***Section 94B - Limitation of interest benefit***	The Finance Act, 2017 introduced limitation of interest benefit (deduction) provisions in where an Indian company, or a permanent establishment of	***In view of the above policy level issues, it is suggested that the restrictions***

Sr. No	Section	Issue/Justification	Suggestion
	provisions introduced – certain concerns to be addressed	a foreign company in India, being the borrower, pays interest exceeding rupees one crore in respect of any debt issued/guaranteed (implicitly or explicitly) by a non-resident AE. The interest shall not be deductible in computing income chargeable under the head 'Profits and gains of business or profession' to the extent, it qualifies as excess interest. Excess interest shall mean total interest paid/payable by the taxpayer in excess of thirty per cent of cash profits or earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to AEs for that previous year, whichever is less. There will be restriction on the deductibility of the interest in the hands of the taxpayer in a particular financial year to the extent it is excess as explained above. However, the same shall be allowed to be carried forward for a period of eight years and allowed as deduction in subsequent years. The above restrictions shall not be applicable to the taxpayer engaged in the business of banking or insurance. These provisions will be applicable for FY 2017-18 and subsequent years. (i) India is a developing country with a need for foreign investment to fund various initiatives, in particular, the development of India's infrastructure. The Government has given its support at a policy level, inter-alia, consistently reducing tax withholding rates on ECBs by Indian entities from non-residents, which indicates encouragement by the Government towards debt obtained by Indian entities by overseas parties. However, the restrictions imposed under the proposed Section 94B above in respect of interest of overseas loans is giving mixed signals to foreign as well as Indian parties at a policy level on overseas borrowings. This inconsistency may lead to further policy level uncertainty in the minds of the business community in India and may undermine the attempts at enhancing the "ease of doing business" by the Government.	***imposed on the interest benefits on overseas borrowings may be done away with entirely or at least deferred for 5-10 years to give India a chance to achieve high growth and achieve significant infrastructural development and maturity.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		Under existing ECB guidelines, there is already a mechanism in place to limit the Borrower's Debt/Equity ratio, which effectively safeguards India's interests with regard to excessive debt. As such, there is no need for any additional measure to protect India's interests in this regard.	
	(ii)	Without prejudice to the aforesaid, if at all it is considered necessary to have provisions to limit the deductibility of interest, the exclusions granted to banking and insurance companies may be extended to other sectors such as Infrastructure and Non-Banking Finance Companies. Large capital-intensive companies with long gestation periods, Non-Banking Finance Companies, companies in the real estate sector and companies in the infrastructure sector (requiring significant foreign capital which may not always come in the form of equity) are typically highly leveraged on account of the business requirements (either by way of external or related party debt) and might be negatively impacted by the interest restriction.	***It is recommended to carve out exceptions for inherently highly leveraged industries from the aforesaid restrictions.*** **The exclusions granted to banking and insurance companies may be extended to other sectors such as Infrastructure, Non-Banking Finance Companies and loss-making companies.** ***<u>Also, the provisions should not be made applicable to new companies/start-ups (i.e. companies formed after 1 April 2016) for initial period of 3 years. This would help them to build good track record and be able to independently obtain debt without support of AE.</u>*** **Alternatively, the provisions may not be applicable, subject to certain conditions in line with BEPS Action Plan 4.** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
	(iii)	The proviso to sub-section (1) provides that where debt is issued by a non-associated lender but an AE either provides implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an AE. In respect of explicit guarantees, the transaction relating to associated enterprises is only towards a guarantee commission (in case charged by the overseas guarantor). The interest towards the borrowing is paid in this case only to a third party wherein the rate and terms are decided purely through negotiation. Hence, restriction of benefit in relation to guarantees ought to be only to the extent of the guarantee commission (if any) claimed as a deduction by the Indian entity and not interest paid to the third-party lender. Further, including implicit guarantees under the above restrictions would lead to significant hardship for the taxpayers and may result in protracted litigation in the coming years. It is pertinent to note that there is no clear definition of implicit guarantee and it would be an onerous task for the taxpayers and tax authorities to determine existence of an implicit guarantee. E.g. when a letter of comfort or simply an undertaking is provided by one AE to a lender or a bank, the tax authorities may contest that guarantee exists, without going into details whether the same has benefited the borrower and whether the AE has actually rendered any service or assumed any liability.	***The said section should be amended to specify limitation of benefits in guarantee cases only to the extent of the guarantee commission (if any) paid by the Indian entity to the overseas guarantor (being its AE) and not the interest. Further, the word implicit guarantee may be dropped from the provisions. The term 'explicit guarantee' may also be appropriately defined to obviate future litigation on this front.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(iv)	Based on the definition of the term 'debt' as provided in clause (ii) of sub-section (5) of proposed section 94B, interest may include many other payments made on various kinds of financial arrangements and instruments. There may be an issue as to what payments made by the taxpayer needs to be included in the term interest e.g. which payments on account of finance lease and financial derivatives should be included in the term 'interest or similar consideration' etc. which may again lead to litigation.	***It is recommended that:*** • ***Appropriate guidelines may be issued to clarify what the term 'interest or similar consideration' should include or exclude as the definition provided in the existing Section 2(28A) of the Act may not be adequate for the***

Sr. No	Section	Issue/Justification	Suggestion
			purposes of thin-capitalisation rules based on the definition of the term 'debt'. • ***the provisions of this section should be made applicable to new debts taken on or after 1 April 2017.*** • ***Interest disallowed under other provisions (sections 40(a)(i) or 43B) should be specifically excluded from definition of "total interest".*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(v)	There is lack of clarity on the mechanism to calculate EBITDA i.e. say, on the basis of book profits calculated on the basis of accounting standards, Ind-AS or otherwise. This may result in unnecessary litigation.	***It is suggested that the mechanism to calculate EBITDA be clearly laid down.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
	(vi)	The BEPS Action Plan 4 provides for a Group Ratio Rule wherein the Group's overall third-party interest as a proportion of the Group's EBITDA is computed and that ratio is applied to the individual company's EBITDA to determine the interest restriction. This would take into account the actual third-party debt and leverage at global level vis-à-vis third parties. This also addresses the issue relating to inherently highly leveraged industries since the global leverage ratio would take into account the significant debt and would	***It is suggested in place of a fixed 30 per cent EBITDA restriction, a Group Ratio could be considered in order to apply the interest deduction restriction under the above provision.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		be commensurate to the leverage ratio required at individual country level. Given this, a relatively fair leverage requirement at India level would emerge.	
	(vii)	Sub-section (1) of Section 94B specifically requires the lending to be from a non-resident AE for the section to trigger. However, branches or permanent establishments of foreign banks are also "non-residents" for the purposes of the Income-tax Act. Whilst branches or permanent establishments of foreign banks operate essentially as Indian companies and compete directly with Indian banks, debt by related Indian branches of banks or guarantees given by AEs towards borrowings by Indian companies from branches or permanent establishments of foreign banks would qualify for disallowance under the above provision. This place the Indian branches of foreign banks at a disadvantageous position vis-à-vis competing Indian banks.	***It is suggested that borrowings by Indian companies from Indian branches or permanent establishments of foreign banks may be wholly excluded from the purview of the aforesaid Sec 94B (either by way of direct borrowing from or by way of guarantee by AE to such branches or permanent establishments of foreign banks).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(viii)	Section 94B(4) provides that where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2): Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.	• ***The CBDT may consider allowing carry forward of excess interest without any restriction on the number of years similar to provisions adopted in case of depreciation. However, in case the same is not feasible carry forward of excess credit should be allowed for a longer period, say 15 years, instead of the prescribed 8 years to cushion the long gestation periods for such industries.***

Sr. No	Section	Issue/Justification	Suggestion
			• ***It may further be clarified that set off will be available even if the section is not triggered in the subsequent year due to interest expense being less than INR 1 Crore.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(ix)	**Carry forward of unused interest capacity:** Section 94B(2) provides that the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less. Business may not earn consistent profit year on year. However, the interest expenditure may be consistent. Given that EBITDA may vary on account of economic considerations, it may be that the cap of 30% may not be exhausted in a particular year (say year 1).	• **It is suggested that there should be a credit mechanism to offset the unutilized limit in subsequent years.** • **The period of set-off may be restricted to 3-5 years.** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(x)	Section 94B deals with limitation on interest deduction in certain cases. The relevant extract of the same is reproduced below: "94B. *(1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt*	**Thus with a view to resolve the issue discussed, it is suggested that for the purpose of computing 'excess interest' under section 94B(2), the term 'total interest paid or payable' should only include interest paid to the associated enterprise.** ***(SUGGESTION FOR RATIONALIZATION OF***

Sr. No	Section	Issue/Justification	Suggestion
		issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2): ***Provided** that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.* *(2) For the purposes of sub-section (1),* ***the excess interest shall mean an amount of <u>total interest paid or payable</u> in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.*"*(<u>emphasis supplied</u>)*. ***I. Issue*** Whether for purpose of determining amount of excess interest under section 94B(2), interest paid to third party lenders (i.e. other than associated enterprises) should be included in 'total interest paid or payable' or it should only include interest paid or payable to associated enterprises? Rationale: • Sub-section (2) to section 94B refers to "*an amount of total interest paid or payable*". The literal reading of the section does not create any limitation on inclusion of interest paid or payable to associated enterprises only. The words referred to are 'total interest paid or payable'. • The legislature in its wisdom has separately referred to "*an amount of total interest paid or payable*" and "*interest paid or payable to associated enterprises*" within the same sub-section itself. Thus, basis the literal reading of the section, interest	***THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		paid to third party lenders shall be included in 'total interest paid or payable' for the purposes of computing the excess interest under section 94B(2). Having said the above, it may be possible to contend that interest paid to third party lenders may not be included in 'total interest paid or payable' for the purposes of computing the excess interest basis the intention of the legislature as per the Memorandum explaining the provisions of Finance Bill Basis the intention of the legislature as per the Memorandum explaining the provisions of Finance Bill, it may be possible to contend that interest paid to third party lenders may not be included in 'total interest paid or payable' for the purposes of computing the excess interest. Reference could also be made Commentary on Finance Act, 2017 published in Taxmann's Master Guide to Income Tax Act [at page 1.91 para 1.7-8a]	
	(xi)	The proviso to sub-section (1) of Sec 94B provides that where debt is issued by a non-associated lender but an AE either provides implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an AE. In respect of explicit guarantees, the transaction relating to associated enterprises is only towards a guarantee commission (in case charged by the overseas guarantor). The interest towards the borrowing is paid in this case only to a third party wherein the rate and terms are decided purely through negotiation. Hence, restriction of benefit in relation to guarantees ought to be only to the extent of the guarantee commission (if any) claimed as a deduction by the Indian entity and not interest paid to the third party lender. Further, including implicit guarantees under the above restrictions would lead to significant hardship for the taxpayers and may result in protracted litigation in the coming years. It is pertinent to note that there is no clear definition of implicit guarantee and it would be an onerous task for the taxpayers and tax authorities to determine existence of an implicit guarantee. E.g. when a letter of comfort or	**Section 94B section should be amended to specify limitation of benefits in guarantee cases only to the extent of the guarantee commission (if any) paid by the Indian entity to the overseas guarantor (being its AE) and not the interest.** **Further, the word implicit guarantee may be dropped from the provisions. The term explicit guarantee may also be appropriately defined to obviate future litigation on this front. Based on present clause, even the banking facilities which are backed by Letter of Awareness from the AE can also qualify as guarantee given by AE for the facility.** ***(SUGGESTION FOR***

Sr. No	Section	Issue/Justification	Suggestion
		simply an undertaking is provided by one AE to a lender or a bank, the tax authorities may contest that guarantee exists, without going into details whether the same has benefited the borrower and whether the AE has actually rendered any service or assumed any liability.	***RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(xii)	There is lack of clarity on the mechanism to calculate EBITDA i.e. say, on the basis of book profits calculated on the basis of accounting standards, Ind-AS or otherwise. This may result in unnecessary litigation.	***It is suggested that the mechanism to calculate EBITDA be clearly laid down.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(xiii)	Sub-section (1) of Section 94B specifically requires the lending to be from a non-resident AE for the section to trigger. However, branches or permanent establishments of foreign banks are also non-residents for the purposes of the Income-tax Act. Whilst branches or permanent establishments of foreign banks operate essentially as Indian companies and compete directly with Indian banks, debt by related Indian branches of banks or guarantees given by AEs towards borrowings by Indian companies from branches or permanent establishments of foreign banks would qualify for disallowance under the above provision. This places the Indian branches of foreign banks at a disadvantageous position vis-a-vis competing Indian banks.	***It is suggested that borrowings by Indian companies from Indian branches or permanent establishments of foreign banks may be wholly excluded from the purview of the aforesaid proposed Sec 94B (either by way of direct borrowing from or by way of guarantee by AE to such branches or permanent establishments of foreign banks).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(xiv)	As per FDI Policy, 100% FDI towards infrastructure falls under automatic route. Foreign investor invest in India with combination of equity and debt. Further maximum debt is back by parent guarantee. The parent guarantee helps Indian borrowers to reduce the interest rate on their borrowing. Given high capital intensive nature of the infrastructure sector, reduced interest costs makes the project further viable. Disallowance / limitation of allowance of interest expense on instances where such borrowing is secured by guarantee by AE will adversely affect the viability of infrastructure projects.	***It is suggested that borrowings by Indian companies backed by corporate guarantee shall be fully excluded in this clause.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
145.	***Section 95 – Applicability of GAAR to be effective from A.Y.2018-19 - Protection from applicability of GAAR should not be restricted to only investments, but may extend to all transactions upto 31.03.2017***	Section 95 was amended via the Finance Act, 2015 to provide that provisions of Chapter X-A relating to General Anti-Avoidance Rule (GAAR) are made applicable from A.Y. 2018-19. In effect, the applicability of GAAR is deferred by two years. In this regard, the following further amendments are required: (a) As per the Explanatory Memorandum to the Finance Bill, 2015, investments made up to 31.03.2017 are to be protected from the applicability of GAAR by amendment in the relevant rules in this regard. Accordingly, Rule 10U has been appropriately amended, and all investments made before 1.4.2017 are protected from the applicability of GAAR. However, all transactions entered before 01.04.2017, and not only investments made, need to be protected from the applicability of GAAR, so as to further improve the investment climate in the country (b) Further, the applicability of section 144BA providing for reference to Principal Commissioner or Commissioner to declare an arrangement as an impermissible avoidance arrangement in order to determine the consequence of such an arrangement within the meaning of Chapter X-A, also needs to be consequently deferred by two years and made applicable from A.Y.2018-19.	***It is suggested that:*** ***(a) All transactions entered into before 01.04.2017 be provided protection from applicability of GAAR, so as to further improve the investment climate in the country.*** ***(b) Section 144BA, providing for reference to Principal Commissioner or Commissioner in certain cases, be consequently deferred by two years and made applicable with effect from A.Y.2018-19.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
146.	***Section 95 - General Anti-Avoidance Rule***	**a) Meaning of the terms 'Substantial' and 'Significant' in Section 97(1) of the Act** The Finance Act, 2015 deferred implementation of General Anti Avoidance Rules (GAAR) by two years so as to introduce provisions of GAAR with effect from Financial Year (FY) 2017-18. The Finance Act, 2016 provides for the effective date as 1 April 2017. Section 97(1) of the Act provides that an arrangement shall be deemed to be lacking	• ***It needs to be clarified what shall constitute as "substantial commercial purpose' and "significant effect' for the purpose of section 97 of the Act.*** • ***Substantial commercial purpose may be explained with reference to the terms***

Sr. No	Section	Issue/Justification	Suggestion
		commercial substance, if inter alia; - • it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit for a party; or • it does not have a significant effect upon business risks, or net cash flows apart from the tax benefit. The terms 'substantial commercial purpose' and 'significant effect' in the context of GAAR have not been defined in the Act.	***used viz. location of an asset/transaction or place of residence of a party (for e.g. whether it would be specified value of assets located; value of a transaction as comparable to the total assets of the business or any other such related parameter).*** • ***Similarly, what will constitute as 'significant effect' vis-a-vis business risks / net cash flows needs to be clarified.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
		b) Clarification on the term 'tax benefit' as defined under section 102(10) of the Act The term 'tax benefit' as defined under section 102(10) of the Act includes, — *"(a) a reduction or avoidance or* ***<u>deferral of tax</u>*** *or other amount payable under this Act; or* *(b) an increase in a refund of tax or other amount under this Act; or* *(c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or* *(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or* *(e)* ***<u>a reduction in total income; or</u>*** *(f)* ***<u>an increase in loss,</u>*** *in the relevant previous year or any other previous*	***Clause (e) and (f) should be appropriately worded to correspond with the 'tax' amount. In other words, the reference to income/loss should not be the base for defining the term 'tax benefit'.*** ***In line with the Expert Committee recommendations, it is suggested that:*** ***a) the tax benefit should be computed in the year of deferral and the present value of money should be ascertained based on the rate of interest charged under the Act for shortfall of tax payment under section 234B of the Act.***

Sr. No	Section	Issue/Justification	Suggestion
		year;"***(Emphasis supplied)*** Clause (e) and (f) in the definition refer to "reduction of total income" and "increase in loss" as tax benefit. An ambiguity arises as to how tax benefit is conditioned at income / loss level. This may also defeat the objective of INR 3 crore tax benefit threshold as provided in Rule 10U of the Income-tax Rules, 1962 (the Rules). Computation of tax benefit on deferral of tax (which is merely a timing difference) needs to be clarified. As observed by the Expert Committee recommendations[1], in cases of tax deferral, the only benefit to the taxpayer is not paying taxes in one year but paying it in a later year. Overall there may not be any tax benefit but the benefit is in terms of the present value of money. Further, as observed by the Expert Committee[2], the term tax benefit has been defined to include tax or other amount payable under this Act or reduction in income or increase in loss. The other amount could cover interest.	***b) for the sake of clarity, it may be specified that tax benefit for the purposes of the threshold shall include only income tax, dividend distribution tax and profit distribution tax, and shall not include other amounts like interest, etc.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
		c) India has signed the 'Multilateral Instrument' (MLI) in accordance with the Base Erosion Profit Shifting (BEPS) Action Plan 15 of the OECD, which, inter alia, deals with the denial of tax treaty benefits in certain cases of anti-abuse arrangements/transactions entered into by the taxpayer. The MLI provides for insertion of anti-abuse provisions (the PPT and the LOB provisions) in the tax treaties so as to deny tax treaty benefits in case of abusive arrangements/transactions being entered into by the taxpayer. The anti-abuse provisions inserted through the MLI would be effective once the same are ratified by both the signatories to the MLI. With India having signed the MLI, there could be a possibility that the same transaction/arrangement could be subjected to multiple anti-abuse provisions, one would be through the anti-abuse provisions inserted in the tax	***It is suggested that GAAR provisions should not be made applicable to abusive transactions (in the case on MNE's) which are subjected to anti-abuse provisions under the tax treaty pursuant to adoption of the MLI provisions. Once the anti-abuse provisions are inserted in the respective tax treaties through the MLI, the government could then assess the situation and examine if GAAR provisions should be made applicable in the case of the said non-resident taxpayers'. This***

[1]Page 48 and 49 of the Final Report by the Expert Committee on GAAR chaired by Dr. Parthasarathi Shome.

[2]Page 47 of the Final Report by the Expert Committee on GAARchaired by Dr. Parthasarathi Shome.

Sr. No	Section	Issue/Justification	Suggestion
		treaty network through the MLI and second by way of the same transaction being subjected to the GAAR provisions which also targets anti-abuse provisions.	***would also pave the way for a conducive economic environment and persuade the global multinationals to establish their foot print in India with a clarity on the domestic tax laws prevalent in the country.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
147.	***Section 115JAA(2A) - Restriction on carry forward of MAT/AMT credit and claim of FTC in relation to taxes under dispute - Restriction to be removed***	In line with Rule 128(7), the Finance Act 2017 inserted second proviso to section 115JAA(2A) restricting quantum of MAT credit to be carried forward to subsequent years. The proviso provides that where the amount of FTC (Foreign Tax Credit) available against MAT/AMT is in excess of FTC available against normal tax, MAT/AMT credit would be reduced to the extent of such excess FTC. Similar restriction is imposed in S. 115JD(2) on AMT credit. Both the provisions are made effective from 1 April, 2018 i.e. will apply in relation to A.Y. 2018-19 and onwards. The rationale of aforesaid restriction/limitation is not clear. The restriction on quantum of MAT/AMT credit to be carried forward subjects taxpayer to duplicated MAT liability while denying the rightful carryover of MAT/AMT credit. The FTC is an alternative form of tax payment. For all purposes including for grant of refund or levy of interest, FTC is treated as advance tax paid to the extent the same is creditable against tax liability in India. Once MAT liability is admitted to be tax liability on income in India, there is no justifiable reason for treating FTC separately depending on whether FTC is creditable against normal tax liability or MAT liability. The said amendment is inconsistent with the Government's	***The restriction on carry forward of MAT/AMT credit may be removed.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		assurance that MAT is to be effectively phased out and incidence of MAT is to be counter matched by grant of extended period of MAT credit.	
148.	***Section 139(5) – Reduction in time limit for filing revised return – Request to bring back erstwhile time limit for filing of revised tax return at least in cases of claim of foreign tax credit***	The Finance Act 2017 amended section 139(5) to provide that the time for furnishing of revised return shall be available upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier. This particularly impacts claims for any Foreign Tax Credit (FTC) in respect of the taxes paid by the individual assessee(s) in the overseas tax jurisdiction. Generally, the information/ final payment of foreign taxes/ tax return is unlikely to be available within the timeline for filing the revised tax return i.e. by the end of the relevant assessment year. As an example, USA follows calendar year as their tax year and the first due date of filing a USA income-tax return is April 15th of the following calendar year, meaning thereby, the USA income-tax return for calendar year 2018 will be required to be filed by 15th April, 2019. In a case of Indian income-tax return for tax year 2017-18, the due date to file a revised return as per the said amendment will be 31st March, 2019. In the above situation, the assessee may not have his final tax return available with him till 15th April 2019, hence, such assessee will not be able to claim the FTC of the final USA taxes paid by him in his Indian income-tax return as he may not have the final USA tax details by 31 March 2019.	***Keeping in mind the aforesaid hardship of double taxation which may arise to the individual assessee as he may not be able to claim foreign tax credit in the absence of overseas income-tax return, there is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Therefore, the earlier time limit may be brought back at least in respect of revision required for claiming foreign tax credit.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
149.	***Application for Permanent Account Number (PAN) in certain cases***	• W.e.f AY 18-19, as per section 206AA of the Act,every person (including foreign entities), not being an individual, which enters **into a financial transaction** of an **amount aggregating to Rs. 2,50,000 or more** in a financial year (FY) shall be required to apply for PAN by the end of the FY in which it enters into such transaction. Further, the term **'Financial transaction'** is not defined.	• ***It is recommended to withdraw the requirement for obtaining PAN in case of foreign entities entering into financial transaction for a value of Rs 2,50,000 or more as it is in contradiction***

Sr. No	Section	Issue/Justification	Suggestion
		• This is in contradiction to the provisions of Section 206AA of the Act read with Rule 37BC which exempt the foreign entities from obtaining PAN in case where the payment is in the nature of Royalty, Fees for Technical Services and payment in case of transfer of Capital Asset. • There may be instances where the foreign entities enters into financial transaction for a value more than Rs. 2,50,000 and there would be no tax liability due to favourable DTAA provisions. They will now be required to obtain PAN. This will create unnecessary hassle to the foreign entities and not be in in line with of 'ease of doing business.	***to the provisions of Section 206AA of the Act.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
150.	***Section 155(14A) - Claim of FTC pertaining to taxes which are under dispute in the foreign country – Clarification required on certain issues relating to period of limitation and documents which shall constitute evidence of settlement***	Section 155(14A) provide that where the payment of foreign tax is under dispute, credit of such taxes will be available in India in the year in which the dispute is settled, on satisfaction of certain conditions. To give effect to this an enabling provision shall be inserted through which Tax Authority will rectify the assessment orders or an intimation order and allow credit of taxes in the year in which the taxpayer furnishes the evidence of settlement of dispute and discharge of foreign tax liability. However, the said amendment does not provide for time limit within which the Assessing Officer has to rectify the assessment order. This provision only gives a reference to section 154. Section 154 provides a time limit of 4 years for reassessment, excluding anything specifically provided under section 155. Issues may arise on what is period of limitation which may apply for section 155(14A) and how it should be applied. The said provision provides that the Assessing Officer shall amend the earlier order which denied FTC, if the taxpayer, within six months from the end of the month in which the dispute is settled, furnishes to the Assessing Officer, evidence of settlement of dispute and evidence of payment of	***(i) The time limit applicable for rectification of order may be clarified. Since all the sub-sections in section 155, provide for the time limit to be applied and some of the sub-sections provide for a different time limit, it may be expressly clarified that what is the period of limitation which may apply to cases covered by the section 155(14A).*** ***(ii) It may also be clarified that the period of limitation (e.g. if it is 4 years), should be 4 years from the end of the year in which the amended order is passed and it should not be the date of the original order. This is for the reason that if the dispute in the foreign country takes more than 4 years to get resolved and if the limitation period is***

Sr. No	Section	Issue/Justification	Suggestion
		tax. Time threshold of six months from date of dispute settlement gives a very small window for taxpayers to claim the benefit for previous years, hence, giving a limited scope to the benefit. It is also not clear as to what could constitute sufficient evidence on the part of taxpayers to claim the FTC benefit on dispute settlement.	***considered to be 4 years from the date of the original order, the taxpayer may not get credit for taxes which he has actually paid. Such may not be the intent of the said provision.*** ***A similar provision is contained in Section 155(16) which provides that where the compensation for compulsory acquisition is reduced by any Court or Tribunal, then the period of limitation shall be reckoned to be 4 years from the end of the year in which the order of the Court or Tribunal is passed.*** ***(iii) The time limit may be amended to provide for 6 months from date of settlement of dispute or date of effect of the amended order passed u/s. 155(14A), whichever is later.*** ***(iv) Clarification may be provided on what is the documentation which shall constitute as sufficient evidence for justifying that the dispute has been settled. This may be done by specifying an illustrative set of documents, which shall constitute as evidence for settlement of dispute.*** ***Illustratively the following may be considered as evidence for settlement of dispute:***

Sr. No	Section	Issue/Justification	Suggestion
			• ***Final assessment order/ final demand notice of the tax authority of the foreign country*** • ***Judgment of the Court of Law along with the final demand notice of the tax authority based on the judgement*** • ***Proof of payment of taxes*** • ***Self-declaration*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
151.	***Section 194LC - Income by way of interest from Indian Company***	**a) Income by way of interest from Indian Company** The Finance Act, 2012 inserted section 194LC to provide that the interest income paid by specified company or business trust 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%. 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 or business trust 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 SUCHINTEREST 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. It is imperative to note that usage 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	***a) 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 or business trust "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"*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
		b) **Expansion of scope and extension of time limit** The Finance Act, 2012 had introduced Section 194LC in the Act to provide for lower deduction of tax @ 5 per cent on interest payments by Indian companies on borrowings made in foreign currency (under a loan agreement or by way of issue of long term infrastructure bonds) before 31 July 2017. The Finance (No 2) Act, 2014, amended Section 194LC of the Act to include all long-term bonds (including infrastructure bonds). Apart from loans and bonds, debentures are also widely used for raising funds by the Indian companies. Currently, there is no clarity whether interest payment on such debentures would be eligible for reduced tax deduction rate under Section 194LC of the Act. Also, the cut-off date as provided in the section (31st July 2017) is impendent. In line with the objective of the government to attract foreign investments and a higher growth rate, the current time lines may be extended.	**b) The concessional tax rate of 5 per cent on interest should be made applicable on other debt securities including debentures, trade credit issued/ availed by any Indian company.** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
152.	***Section 194LC and Section 206AA - Scope of concessional rate of tax on overseas borrowings***	Currently as per the provisions of section 194LC of the Act, interest paid by an Indian company to a non-resident, in respect of approved borrowings made (during the period 1 July 2012 to 30 June 2015) in foreign currency from sources outside India (under a loan agreement or on issue of long-term infrastructure bonds) is taxable at a concessional rate of 5% (plus applicable surcharge and education cess). Further, as per section 206AA(7) of the Act, interest paid on the long-term infrastructure bonds would be subject to a concessional rate of tax	***It is therefore, suggested to make the aforesaid amendments to the Act effective from 1 April 2014 to enable corporates to use this rare window of opportunity to raise long term capital at competitive price, for their capital expenditure. There are quite a few proposals in the pipeline for raising long term capital from the***

Sr. No	Section	Issue/Justification	Suggestion
		irrespective of whether the lender has a Permanent Account Number (PAN) in India or not. In order to further augment low cost long-term overseas borrowings, the amendments to section 194LC and section 206AA of the Act respectively are made effective from ***1st October 2014***. Under the aforesaid proposed amendment, the benefit of lower withholding tax @5% for overseas borrowing is extended up to 1 July 2017 and it shall apply to all long-term bonds and not merely restricted to infrastructure bonds as is the case under the relevant provisions of the existing Income tax Act. Further, the benefit of section 206AA(7) of the Act, shall be extended to all types of long term bonds including infrastructure bonds, which means PAN of beneficial holders of bonds shall not be mandatory for all types of long term bond issues in the international market. **Hardships** While the fiscal measure taken by the Government to encourage the corporates to raise long term capital at competitive price for their capital expenditure are appreciated, there is an urgent need for making the proposed amendments effective from 1 April 2014 so that companies can take advantage of the prevailing opportune market conditions. In this connection, the global market conditions have been summarized below: ➢ The international debt markets are very strong and buoyant, with the Asia ex Japan G3 market seeing over US$116bn in 2014 till date in issuance volumes, nearly 83% of total issuance in 2013. ➢ Investor liquidity remains very strong, and there are consistent fund flows back into emerging market and Asian bonds for the past 14 consecutive weeks. ➢ US treasury yields remain significantly lower	***international debt markets which could get adversely impacted if this amendment is implemented as per the currently enacted timeline of 1st October 2014. Therefore, there is an urgent need to make the amendment effective as suggested.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		than at the start of the year, as the markets gauge the outlook for the global economy, geopolitical risks and the expected actions of the Central Banks. 2.55% / 3.37%. ➢ US rates at 2.55% for 10 years and 3.37% for 30 years remain conducive for issuers looking to extend duration, with the 30-year US Treasury currently close to a 9-month low. ➢ Global credit market conditions remain very strong with credit spreads having tightened sharply over the past year. ➢ The demand for Indian credits has been extremely strong, with Indian credit spreads having tightened by 30-40 bps since 1 April and 80-100 bps since 1 February 2014. This has been driven by supportive technical, relative lack of supply and improved macro indicators. These favourable financial market conditions could get impacted in the short term by changes in the economic data emanating from the major economies as well as due to geopolitical factors such as the continued unrest in the Middle East.	
153.	***Section 194LD - Income by way of interest on certain bonds and Government securities***	As per Section 2(28A) of the Income-tax Act 1961, "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;" As per the provision of major DTAA ,"interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits; and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose	***It is suggested that Clarity on the definition of effective interest rate i.e. whether or not it includes premium on redemption may be provided.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		of this Article. As per ICDS, Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable. Discount or premium on debt securities held is treated as though it were accruing over the period to maturity. The above 3 definitions have led to the following confusion in both borrowers and lenders domain. 1. Borrower would now have to deduct tax on what amount? 2. If TDS is deducted on premium wouldn't that tantamount to tax on capital gains 3. Per provisions of section 194LD, the lower withholding rate would be applicable only on interest paid on bonds whose interest rates do not exceed the rate as specified by the Central Government in this regard (at present 15%). The debentures instruments comprise of two aspects a. interest rate b. redemption premium	
154.	***Section 195 –*** ***a) Scope and applicability***	Finance Act, 2012 extended the obligation to withhold taxes to non-residents irrespective of whether the non-resident has - (i) a residence or place of business or business connection in India; or (ii) any other presence in any manner whatsoever in India. The aforesaid amendment was introduced with retrospective effect from 1 April 1962. The amendment results in a significant expansion in the scope of withholding provisions under the Act and will cover all non-residents, regardless of their presence/ connection in India. The Supreme Court in the case of Vodafone International Holdings B.V. had observed that the provisions of Section 195 of the Act would not apply to payments between two non- residents situated outside India. The Supreme Court also referred to tax presence as being a relevant factor	***Keeping in view the observations of the Supreme Court, it is suggested that the amendment should be modified to restrict the applicability of withholding tax provisions to residents and non-residents having a tax presence in India.*** ***At least, it should be clarified that the amendment will not have retrospective application.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		in order to determine whether a non-resident has a withholding obligation in India under Section 195 of the Act.	
	b) Time limit for Issuance of "general or special order	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. It may be noted that no time limit of passing such order has been prescribed in the Act, which causes undue hardship in genuine cases.	***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.*** **(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)**
	c) Withholding tax on reimbursements - Section 195	Cross border transactions may result in reimbursements of expenditures / costs incurred on behalf of the Indian company by the foreign parent/group company. Contrary positions have been taken by various judiciaries on the issue of withholding tax on reimbursements made by an Indian company to its foreign parent / group company. There is no clear view with respect to the same. Further, non-compliance with withholding tax provisions will attract disallowance under section 40(a)(i) of the Act including interest and penal proceedings.	***It is suggested that a clarification, perhaps by way of a CBDT circular, stating that withholding tax would not be applicable for specific cases of reimbursements, would help reduce undue litigation in this regard.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
	d) ***Consequential amendment required in section 204***	Section 195(6) is amended w.e.f. 01.06.2015 to provide that the person responsible for paying to a non-resident (not being a company) or a foreign company, any sum, whether or not chargeable under the provisions of the Income-tax Act, 1961, shall furnish the information relating to payment of such sum, in such form and manner, as may be	***(i) Section 204 may be amended as follows -*** ***For the purposes of the foregoing provisions of this Chapter~~and section 285~~, the expression "person***

Sr. No	Section	Issue/Justification	Suggestion
		prescribed. However, consequential amendment has not been made in section 204(iii), defining "person responsible for paying" in case of credit, or, as the case may be, payment of any other sum chargeable under the provisions of this Act, to mean the payer himself, or, if the payer is a company, the company itself including the principal officer thereof. The above definition of "person responsible for paying" given in section 204(iii) is in relation to credit or payment of any sum chargeable under the provisions of this Act, and is hence, relevant in the context of section 195(1). However, the said definition has to be amended to make the same relevant in the context of section 195(6) also. Further, in section 204, the "person responsible for paying" has been defined for the purposes of the foregoing provisions of Chapter XVII and section 285. Since section 285 is in respect of submission of statement by a non-resident having liaison office, the definition of "person responsible for paying" given in section 204 is not relevant in the context of section 285. Consequently, taking into consideration the above issues, section 204 needs to be appropriately amended. A penalty of Rs. 1 lakh is leviable under section 271-I for failure to furnish information or for furnishing inaccurate information under section 195. The penalty is quite high, considering that the reporting requirement may be relating to a transaction which is not be chargeable to tax. Also, while the meaning of "person responsible for paying" has been defined under the Act, "person responsible for collecting" has not been defined anywhere in the Act. The meaning of "person responsible for collecting" may be incorporated in the Act for clarity.	***responsible for paying" means –*** ***'(iii) in the case of credit, or, as the case may be, payment of any other sum chargeable under the provisions of this Act, or in the case of furnishing of information relating to payment of any sum to a non-resident (not being a company), or to a foreign company, whether or not such sum is chargeable under the provisions of the Act, the payer himself or if the payer is a company, the company itself including the principal officer thereof.'*** ***(ii) The penalty may be reduced, in case non-furnishing of information relates to a transaction not chargeable to tax.*** ***(iii) The meaning of "person responsible for collecting" may be incorporated in the Act.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	e) Section 195 - Clarification	In section 195, Clarification on TDS from payments to non-residents having no Indian	***In order to avoid litigation, it is suggested that a***

Sr. No	Section	Issue/Justification	Suggestion
	required	branch/ fixed place/ Permanent Establishment in India should be inserted. In various cases, Income-tax department attracts the provision of section 195 and ask the assessee to deduct TDS. For example, when expenses such as commission payment is done by the Indian Residents to Foreign Residents having no branch/fixed place or Permanent Establishment in India and who work outside India and they help in promoting and sales of Indian Goods then the Income-tax department attracts the provision of section 195 and ask the assessee to deduct TDS. Hitherto, the export commissions paid to foreign agents were never in question of taxation in India. This was fortified by CircularNo.23 dated 23 July 1969 which stated that where a foreign agent of India exporters operates in his own country and his commission is usually remitted directly to him and is, therefore, not received by him or his behalf in India, such an agent is not liable to income tax in India on the commission. Later Circular No. 786 dated 7 February 2000 emphasized the clarification in the above circular and laid down the law that where non-resident agent operates outside the country, no part of his income arises in India and since the payment is usually remitted directly abroad, it cannot be held to have been received by or on behalf of agent in India. Such payment was therefore, held to be not taxable in India. In 2009, vide circular No 7, both the above circulars namely Circular No. 23 dated 23-07-1969 &Circular No. 786 dated 07-02-2000 were withdrawn, reasoning that interpretation of the Circular by some of the taxpayers to claim relief is not in accordance with the provisions of section 9 of the Income-tax Act, 1961 or the intention behind the issuance of the Circular. With the withdrawal of the circulars, it was left to the courts to decide the issue afresh.	***suitable amendment in form of Explanation should be inserted in section 195 of the Income-tax Act or alternatively an appropriate clarification by way of circular may be given.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	f) Applicability of Rule 37BB read	Remittance under Liberalised Remittances Scheme of RBI	***Capital account transactions should be***

Sr. No	Section	Issue/Justification	Suggestion
	with Section 195 for making remittances outside India	Amended Rule 37BB(3)(i) of the Rules exempts remittances as per the provisions of Section 5 of the FEMA read with Schedule-III i.e. only current account transactions. As per Section 5 of the FEMA, any person may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction provided that the Central Government may, in public interest and in consultation with the Reserve Bank of India, impose such reasonable restrictions for current account transactions as may be prescribed. The Master Direction No. 7/2015-16 dealing with the Liberalised Remittance Scheme (LRS) is a liberalisation measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both. The press release issued by the CBDT on 17 December 2015 states that Form 15CA and 15CB will not be required to be furnished by an individual for remittances which do not require RBI approval under the LRS. However, it may be noted that LRS does not find any specific mention in the amended Rules. LRS is a wider term as it includes within its scope both permissible capital and current account transactions. The amended Rules is silent with respect to the capital account transactions under LRS.	***specifically included in the exclusion list of Rule 37BB(3)(i) of the Rules read with Section 195(6) of the Act.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	g) Penalty for failure to furnish information or furnishing inaccurate information under Section 195	The Finance Act, 2015 has introduced penalty (Section 271-I of the Act) in case of failure to furnish information or furnishing of inaccurate information as required to be furnished under Section 195(6) of the Act, to the extent of INR one lakh.	***It is not clear whether the penalty is qua the payment made or qua the transaction or qua the contractual obligations for a specific financial year. Therefore, the same should be clarified in a suitable manner.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF***

Sr. No	Section	Issue/Justification	Suggestion
			DIRECT TAX LAWS)
155.	***Section 201 – Limitation period for Non-resident***	Invocation of section 201 in case of a payer to a non-resident for not withholding appropriate tax and depositing the same in the Indian treasury There is no limitation period for invocation of this provision. This creates need for increasingly impractical period of indemnity being sought by a payer from the recipient. Where the payer is conducting very few or one-off transactions involving India, this creates inordinate uncertain Indian tax exposure for such payer.	***Limitation period should be provided as follows: (I) 4 years from the end of the financial year in which the transaction requiring tax to be withheld, took place; (II) Absolving the payer from this obligation if the payee non-resident files tax return in India and hence is now approachable by the tax department to be pursued for tax recovery, if any. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
156.	***a) Relieve return filing obligation if royalty/ FTS/ capital gains has suffered TDS and also clarify that s.206AA(7)(ii) read with Rule 37BC has retrospective effect***	Pursuant to recommendations in the first report of the Income Tax Simplification Committee, Finance Act 2016 has liberalized the provisions of s.206AA by inserting s.206AA(7)(ii) which provides that s.206AA shall not apply to payments to non-residents subject to conditions as may be prescribed. Recently, CBDT has notified Rule 37BC which provides that if the non-resident payee furnishes certain information and documents like TRC or Unique Identification number in his home country, s.206AA shall not apply to specified payments viz. interest, royalty, FTS and capital gains. This is a welcome relief to the taxpayers and considerably improves ease of doing business with non-residents by obviating the need to obtain PAN for non-residents. However, the requirement of filing returns by such non-residents still continues (except for interest payments covered by s.115A(1)(a)) and without PAN, it is also possible to file return.	***In line with recent exemption provided to non-residents from obtaining PAN for avoiding higher TDS u/s. 206AA if they furnish TRC, they should also be relieved from return filing obligation where payer has already withheld taxes and reported in Form 15CA/CB. Additionally, the non-residents shall also be relieved from filing Form 3CEB and maintaining transfer pricing document in case of transactions with associated enterprises on which appropriate TDS has been deducted. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT***

Sr. No	Section	Issue/Justification	Suggestion
		Thus, the position which presently exists is that while PAN is not necessary at withholding stage, it is still necessary for filing return. Non-filing of return attracts penalty u/s. 271F has also risk of prosecution u/s. 276CC The TDS rates applicable for non-residents is generally the final tax payable by such non-residents. The information of payments to non-residents gets transmitted to Tax Department on real time basis through compliance u/s. 195(6) read with Rule 37BB (Form 15CA/B) and quarterly withholding tax returns. Hence, requirement of filing return has no real benefit to the Tax Department. On the contrary, it increases compliance burden for the non-residents and makes them liable for penalty or prosecution.	***TAX LAWS)***
	b) PAN for foreign parties i.e. non-residents	India has entered into number of DTAA under the Viena Convention and the domestic law under section 206AA should not override such agreements with other countries. Therefore, it should be provided that wherever the rate of tax under the DTAA is lower than 20% under section 206AA, same should be applicable irrespective of the non-resident having PAN in India.	***It is suggested that section 206AA should not override the DTAA entered in to by India.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
157.	***TDS on interest on NRO account***	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 whopping 30%. In majority cases, the NRI's are not able to file for refunds due to small amount as the cost of filing is more than deduction.	***Commercial banks may be instructed by proper authority, not to deduct TDS on NRO account earning interest upto INR 10,000 per annum.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
158.	***Equalization levy***	The Finance Act, 2016 has introduced a levy of 6% on consideration paid or payable by an Indian resident carrying on business or profession, or by an Indian permanent establishment of a non-resident to a non-resident not having a permanent establishment in India, for providing specified online advertisement services.	• ***The responsibility for payment is cast on resident payer to deduct and deposit the levy. Interest and penalty are levied for***

Sr. No	Section	Issue/Justification	Suggestion
			delay or failure of compliance. This involves additional cost of compliance to Indian businesses. • ***The equalization levy is a separate levy under the Finance Act and is not a part of the Act. The non resident liable to equalization levy will not be able to claim credit for the levy paid in India in the country of his residence. This will lead to double taxation of the same income.*** ***It is recommended that Chapter VIII should be omitted.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
159.	***Chapter VIII of the Finance Act, 2016 - Equalisation Levy - Issues to be addressed***	The Finance Act, 2016 has inserted a new Chapter VIII titled "Equalisation Levy" to provide for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India. In other words, the Finance Act, 2016 enacted a levy of 6% on consideration paid or payable by an Indian resident carrying on business or profession, or by an Indian permanent establishment of a non-resident to a non-resident not having a permanent establishment in India, for providing specified	***In view of the issues detailed, it is suggested that suitable amendments may be carried out in the Chapter VIII of the Finance Act, 2016. Particularly, after 1 April 2017, GAAR will ensure that artificial avoidance of taxable presence is not likely to remain tax protected for the non-residents.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF***

Sr. No	Section	Issue/Justification	Suggestion
		online advertisement services. Certain issues arising from the same are as below: • The responsibility for payment is cast on resident payer to deduct and deposit the levy. Interest and penalty would be levied for delay or failure of compliance. This would involve additional cost of compliance to Indian businesses. It is an indirect levy. • The equalization levy is a separate levy under the Finance Act, 2016 and will not be part of the Income-tax Act, 1961. This results in defeating the option available to a non-resident of choosing the more beneficial option between the Treaty and the Income-tax Act, 1961. • Also, the non-resident may not be able to claim tax credit of this levy in his country of residence, if the DTAA allows foreign tax credit in respect of tax paid under the Act and not in respect of similar taxes paid which are outside the ambit of the Income-tax Act, 1961. It is recommended that the provision be withdrawn or be enacted under Act.	***DIRECT TAX LAWS)***
160.	***Tax consolidation Scheme***	In India, separate entities are incorporated based on their specialization in various lines of businesses (like manufacturing, trading, retail, infrastructure etc.) by the parent company. Separate companies are incorporated to attract investors which suits their needs. Investors are more likely to invest in a well-structured organisation. Because of commercial compulsions, the business houses are forced to have many subsidiaries under one parent. The group as a whole and the tax Department face many challenges. Some of them are:- • Each Entity is considered as separated entity and therefore required to file a separate income tax return, involving huge cost of Income Tax compliance by tax payer. • Each entity is assessed/ scrutinized separately resulting in litigation cost for each entity. Significant administrative costs are	***In view of the aforesaid benefits it is suggested that a tax consolidation scheme may also be adopted in India. This would create a positive impact on business with significant reduction of compliance and litigation cost.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		incurred by the Income tax Department in keeping track of records and assessing multiple subsidiaries. • Apart from cost, a lot of efforts are required by both tax payer as well as Income tax Department for undertaking compliance. Tax consolidation or combined reporting is a regime adopted in the tax or revenue legislation of a number of countries which treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes. The head entity of the group is responsible for all or most of the group's tax obligations such as paying tax and lodging tax returns. In terms of mechanics, all transactions between the group companies of the consolidated group are ignored for tax purposes. **Benefits** – i. Tax consolidation scheme would help to centralize the planning and payment of tax by the parent company. ii. It is common in India that the parent company engaged in various lines of businesses incorporate many subsidiary companies. Since the market is volatile, it may happen that one company is incurring losses and other is earning profits. At a group level, the tax outgo would be more as under the Income-tax Act at present, there are no provisions to set off loss of one group-company with another profit making group-company. Under tax consolidation, the company can set off the losses of one inter group company with the profits of another company. Tax consolidation would take care of such situations which facilitate development of new businesses of challenging nature such as retail or telecom. Where financial risks are	

Sr. No	Section	Issue/Justification	Suggestion
		isolated in a new company but at the same time tax revenues and losses can be consolidated. iii. Any unused foreign tax credit by one company can be used by the other affiliates within the group. iv. Currently, in the Income-tax Act, 1961 the Domestic Transfer Pricing provision requires all the intercompany transactions to be at Arm's Length Price and need to be reported. Under the consolidated tax scheme such intra group transactions would be net off and thereby will reduce the time and compliance cost of the tax payer and administrative cost of the Income-tax Department. v. In group taxation all transactions between group companies are ignored for tax purposes. This will help in tax free movement of assets across the group which would aid in internal restructuring. vi. In India, each company is individually liable for separate tax assessments. By introducing the tax consolidation scheme, the parent company would act as an agent in all the tax matters. vii. The number of litigations pending with the tax department would also reduce and thereby reducing the administrative cost of the Income-tax Department. viii. In the long run such a regime would not negatively impact the overall tax revenues as tax offset of carry forward losses/depreciation is already allowed under the Income-tax Act, 1961, accordingly any tax offset claimed by the individual taxpayer would be offset when the aggregate approach for the economy as a whole is considered.	

Sr. No	Section	Issue/Justification	Suggestion
		ix. Member of the group companies obtaining for tax consolidation can enter into an arrangement with Income Tax Department/ CBDT for a nominated member of the group to be in liaison with Income Tax Department/ CBDT, such that all payments of tax flow through that nominated company. x. It is believed that for capital intensive sectors like infrastructure and financial services introduction of such a progressive tax regime would be beneficial and fair to the taxpayer. xi. The tax consolidation regime has been adopted in tax legislations of a number of foreign countries like Australia, France, Germany, Italy, Japan, Korea, Spain, USA etc. These countries have not only successfully implemented the said regime but also created a positive impact on business with significant reduction of compliance and litigation cost. xii. This will create a positive impact on business and provide a level playing field to the Indian companies. The tax consolidation regime also endorses the Government's efforts of "Ease of doing business in India" and assist in aligning the business and tax objectives of the industry. xiii. No. of tax exemptions are being reduced and very soon, no deduction/exemption will be allowed in computing taxable income. It is very logical to introduce tax consolidation scheme. Many mergers, demergers which are being done only to take advantage of tax losses will not be required. A snapshot of the tax consolidation regime in various jurisdictions is summarized in Annexure A	

Sr. No	Section	Issue/Justification	Suggestion
161.	***Deputation of employees - [Taxability as fees for technical services/ Permanent Establishment issues]***	An issue is under debate as to whether payments made by the Indian company to foreign company towards reimbursement of the salary costs of persons deputed to India would be treated as fees for technical services. Further, such deputations are often tested for a risk of creation of a PE for the foreign enterprise in India. Employees deputed to the Indian company work under the control and supervision of the Indian company and are essentially employees of Indian company. Any payments made by the Indian company towards the amounts cross-charged by the Foreign Company would be in the nature of re-imbursement of the salary costs and ought not to be taxable.	***It is suggested that a specific clarification may be provided by the Government to the effect that as long as the employee works exclusively for the Indian company during the period of deputation and operationally works under the 'control and supervision' of the Indian company, payments made by the Indian company to the foreign company would not qualify as FTS. Further, it should be clarified that such an arrangement would not trigger a creation of PE for the foreign enterprise in India.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
162.	***TDS on payment made to non-residents***	a) Section 195(1) of the Income-tax Act, 1961 provides for the applicability of TDS provisions on "any person" responsible for paying to a "non-resident" subject to exceptions as provided in the section. Practically, the fact that every person including individuals, making any payment to non-residents, is liable to deduct tax at source is not known to many. There have been instances where the payment of rent is made to a non-resident through online banking by a salaried employee who is claiming HRA, without knowing that he is required to deduct tax. This not only leads to loss of revenue but also causes hardship to the assessee only due to ignorance of law, which but of course is not an excuse. b) Section 195(2) provides that where the person responsible for paying any sum chargeable under this Act to a non-resident considers that whole of such sum would not be income chargeable in the	***It is suggested that*** ***a) the fact that any person including individuals, making any payment to non-residents, is liable to deduct tax at source should be widely publicized by the Department.*** ***b) To remove administrative hassles, the payer or the payee should be allowed to issue certificate for short or non-deduction of tax at source) Since a benefit has been extended to the assessees by way of the provisions of section 54 to 54F, the same***

Sr. No	Section	Issue/Justification	Suggestion
		case of the recipient, he may make an application to the Assessing officer to determine by general or special order, the appropriate portion of sum so chargeable. Further section 195(3) gives the recipient an option to make an application to Assessing Officer for the grant of certificate authorizing him to receive any sum without deduction of tax at source, subject to the rules notified in this regard. Making an application to the Assessing officer and follow ups thereafter leads to administrative hassles. c) The provisions of section 54 to 54F relating to investments allow the assessee to save tax on capital gains arising from transfer of property. However, such investments are made over the period of time i.e. within 6 months or 1 year. Certain assessees face hardship on this account since their income becomes non-chargeable to tax only after taking into consideration the proposed investments. The issue arises since the investments proposed to be made under sections 54 to 54F are not taken into account by the Assessing Officer while giving a certificate of lower deduction of tax at source or no deduction of tax.	***should be taken into account by the Assessing officers while issuing certificate of lower deduction of tax at source or no deduction under section 195 and 197.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
163.	***Time limit for TDS assessments of payments made to non-residents***	Presently, there is no time limit specified by the Act for initiating & completion of TDS proceedings under section 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.	***It is suggested to fix a specific time limit for initiating & completing TDS proceedings under section 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.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
164.	***Provision for the employer to provide tax treaty benefits while calculating TDS***	Under the current tax regime, there is no provision under the Act which enables an employer to consider admissible benefits under the respective Double Taxation Avoidance Agreements (e.g. credit for taxes paid in another country/ treaty exclusions of income etc.), while	***It is recommended to provide for claiming relief available under the tax treaty, at the time of TDS.*** ***(SUGGESTION FOR RATIONALIZATION OF***

Sr. No	Section	Issue/Justification	Suggestion
		computing tax to be deducted under Section 192 at the time of payment of salaries to employees. Further, the foreign tax credit rules notified by the CBDT in June 2016 also does not contain explicit provision for providing credit for taxes paid in another country by the employer at the time of deduction of tax on salary payments. Due to the above, it creates cash out-flow issues to the employees (migrating employees coming to and leaving India) who are initially subject to full TDS by their employers and thereafter required to claim refunds on account of tax treaty benefits while filing their income tax return. Many of these employees may complete their assignments and leave India prior to obtaining their tax refunds which also creates hardships with respect to receiving back the refund amounts.	***THE PROVISIONS OF DIRECT TAX LAWS)***

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