Suggestions on the Direct Taxes Code Bill, 2010

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, NEW DELHI

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The Income-tax Act, 1961 [I.T. Act], with large number of amendments made in nearly last fifty years, has become very complex leading to litigation and uncertainties. Considering the sea change in the nation's economic policy and environment, the country certainly needs a new Income-tax law. Accordingly, the proposal for enacting a new Direct Taxes Code [DTC], and the process adopted for its introduction is certainly a step in the right direction.

Some of the features incorporated in the DTC are worth appreciating, such as the policy of reducing rates consequent upon reducing incentives/exemptions, rates of taxes being provided in the DTC itself, specific provision restricting double taxation of the same income, specific provision that no double deduction will be permitted, substitution of market value as on 1.04.2000 in place of cost for the purpose of computing capital gain in case of investment asset etc. The stated objectives are also laudable. At the same time, some of the conceptual changes proposed in the DTC are highly debatable.

While preparing the new tax law, it should be borne in mind that in the present Income-tax Act, over the years, the position of law with regard to large number of provisions has got settled and it may be inadvisable to disturb settled concepts. Otherwise, the DTC could result in large scale litigation that would take few decades to settle and ultimately, will meet the same fate as the Income-tax Act. The DTC also has to be fair, equitable and clear. There are issues in this regard that need to be addressed in drawing up the proposed Direct Taxes Code. The impact of provisions such as GAAR and the possibility of these being used as tools for harassment of genuine taxpayers needs to be seriously considered - especially because these are drafted to reverse the onus of proof on the assessee.

The Institute of Chartered Accountants of India, formed under an act of Parliament, views the profession as a partner in nation building. **We hold no brief for those who evade taxes.** Rather, it is our belief and endeavour that defaulters should be strongly acted against. However, in doing so, the rule of law, equity and justice is paramount. It is equally necessary to recognise that in the liberalised, low tax regime - the impetus to avoid taxation is less; and in the zeal to book tax evaders, genuine taxpayers should not suffer. It is in this context that we submit that some of the provisions in GAAR require reconsideration.

We fully endorse the attempt to ensure that tax evaders are strongly dealt with. However, we must also mention that the failure to effectively do so under the present act arises not only due to inadequacy of the law. There is need for serious introspection and for introduction of some mandatory form of accountability in regard to tax administration. **It is not enough to enact good laws. It is imperative to see that they are fairly, justly and equitably administered.** Just as tax evaders need to be brought to book, accountability in tax administration needs to be institutionalised through a transparent process. We strongly urge that concrete steps in this regard need to be taken in order to demonstrate that the thrust towards improvement in tax laws is not targeted only towards the taxpayer but encompasses all stakeholders in the revenue collection process.

Growth in the Direct Tax Collections - Undisputed need

Undoubtedly, there is a need to continue growth in the collection of direct taxes. But the question is: What should be the approach for achieving the same keeping the long term national interest in mind? It should also be remembered and noted that an exceptional increase in the direct tax collections in the earlier 3-4 years (except in the Financial Year 2008-09) was mainly due to unprecedented boom in the economy and there is, by and large, consensus that such exceptional continuous unprecedented boom rarely gets repeated. Therefore, on such a highly increased base of direct tax collection, it may be too optimistic to expect such continuous trend of increase in tax collection in the present economic scenario. If targets of economic growth are achieved, growth in the collection of direct taxes would be automatic. This is evident by the current year's trend. Hence, the focus should be on economic growth. In light of this, the provisions giving the government a better locus-standi in regard to international / cross-border taxation and treaty negotiation issues is appreciated. At the same time, we have given in our submissions certain perspectives in regard to CFC provisions which merit consideration from the perspective of India as a growing economic power. We are certain that whilst keeping focus on revenue collection, the impact of the DTC provisions on business confidence and economic environment will also be kept in mind.

The present Income-tax Act has evolved over six decades and all the laws relating to the major areas have been critically examined by the judiciary and have become well-settled. Therefore, it is suggested that the major part of the existing statute, on which the law is almost settled and contentious issues largely resolved , may be retained and necessary changes may be made only with regard to other part. This will help in avoiding litigation on settled position of law. Perhaps, there is a need to think on this line and the final decision may be taken after considering the long term impact of all the major conceptual changes proposed in the DTC.

The suggestions of the ICAI on the issues arising from the Direct Taxes Code have been divided into two parts comprising of:

PART A	**:**	**TABULAR SECTION-WISE PRESENTATION OF SUGGESTIONS ON THE PROPOSALS CONTAINED IN THE DIRECT TAXES CODE BILL, 2010 (presented in the manner prescribed)**
PART B	**:**	**SUGGESTIONS ON PROPOSALS IN DTC WHICH DO NOT HAVE CORRESPONDING PROVISIONS IN THE PRESENT ACT**

PART A: TABULAR SECTION-WISE PRESENTATION OF SUGGESTIONS ON THE PROPOSALS CONTAINED IN THE DIRECT TAXES CODE BILL, 2010

Sl. No.	Clause No. as DTC	Sub. of the clause	Provisions as per existing section	Provisions as per Direct Taxes Code Bill, 2010	Suggestions made by ICAI	Justification for the suggestion
1	**4(1)(b)(i)**	Residence in India	As per section 6(*1*)An individual is said to be resident in India in any previous year, if he— (*a*)………… (b)………… (*c*) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.	As per section 4(1)(b)(i), an individual shall be resident in India in any financial year, if he is in India for a period, or periods, amounting in all to sixty days, or more, in that year.	***Section 4(1)(b)(i) may be re-worded as follows:*** ***"(b) for a period, or periods, amounting in all to -*** ***(i) NINETY days, or more, in that year, and"***	With increased globalisation, international collaborations and foreign / NRI investments, people frequently visit India. Under section 4(1)(b), a visitor to India may become Indian resident if he is visiting India for ninety days every year. It would be better if the period of Indian stay provided in 4(1)(b)(i) is increased from sixty days to ninety days.
2	**4(3)**	Residence in India	As per section 6(3) a company is said to be resident in India in any previous year, if— (i) it is an Indian company ; or (ii) during that year, the control and management of its affairs is situated wholly in India.	Section 4(*3*) provides that a company shall be resident in India in any financial year, if— (*a*) it is an Indian company; or (*b*) its place of effective management, at any time in the year, is in India. Further sub-section (*4*) provides that every other person shall be resident in India in any financial year, if the place of control and management of its affairs, at	**The said sub-sections may be re-worded as follows :** **Section 4(*3*) " A company shall be resident in India in any financial year, if—** **(*a*) it is an Indian company; or** **(*b*) its place of effective**	The change is suggested to clearly bring out the intention of the section.

				any time in the year, is situated wholly, or partly, in India.	**management, at any time in ~~the~~ THAT year, is in India.** **Section 4(*4*) "Every other person shall be resident in India in any financial year, if the place of control and management of its affairs, at any time in ~~the~~ THAT year, is situated wholly, or partly, in India."**	
3	**5(2)(b)**	Income deemed to accrue in India	Section 9(1)(iv) provides a dividend paid by an Indian Company outside India shall be deemed to accrue or arise in India. Section 56(2) provides that in particular and without prejudice to the generality of the provisions of sub-section(1), the following income shall be chargeable to income tax under the head "Income from other sources", namely:- (i) dividends ; (ii) ……. Section 10(34) provides that any income by way of dividends referred to in	Section 5(2)(b) provides that any dividend paid by the domestic company outside India shall be deemed to accrue in India. Section 58(2)(a) provides that gross residuary income shall include dividends, other than dividends in respect of which dividend distribution tax has been paid under section 109. Further, clause (19) of Sixth schedule provides that any dividend declared, distributed or paid to a company or a non-resident, in respect of which dividend distribution tax has been paid under section 109 shall not be included in the total income. Section 314(84) defines "domestic company" as a company resident in India.	**1. Section 5(2)(b) may be re-worded as :** **"any dividend paid by the ~~domestic~~ INDIAN company ~~outside India~~"** **2. Clause (19) of Sixth schedule should be re-worded as :** **"any dividend declared, distributed or paid ~~to a company or a non-resident,~~ in respect of which dividend distribution tax has been paid under section 109"**	1. As per the proposed law, domestic company means a resident company and residential status of the company depends upon its place of effective management. The place of management may differ from year to year which may change the residential status of a company. Thus, in section 5(2)(b) the words "domestic company" may be changed to "Indian Company". Further, the words "outside India" should be deleted to make this sub-section a charging section. Thereafter, the exemption may be provided in the sixth schedule. 2. Under the present law,

			section 115-O (i.e. dividends on which DDT has been paid) shall not form part of total income. Explanation.—For the removal of doubts, it is hereby declared that the dividend referred to in section 115-O shall not be included in the total income of the assessee, being a Developer or entrepreneur Section 2(22A) provides that "domestic company" means an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income.			dividend in respect of which dividend distributed tax has been paid is not included in the total income of the assessee including all residents. However, clause(19) of sixth schedule of the DTC, 2010 does not mention about the dividend distributed or paid to a resident which seems to be an omission by mistake.
4	**5(4)**	Income deemed to accrue in India	Clauses (b), (c) and (d) Explanation 1 to section 9(1)(i) mention the income which shall not be deemed to accrue or arise	The said sub-section provides that the income deemed to accrue in India under sub-section (1) shall, in the case of a non-resident, not include ……..	**The said sub-section may be re-worded as follows : "the income deemed to accrue in India under sub-section (1) AND (2) shall,**	Sub-section (2) of section 5 also lays down income which shall be deemed to accrue in India. It seems that the mention of the

			in India. However, the same has no connection with the error being pointed out. The error arises out of numbering provided in DTC.		**in the case of a non-resident, not include ……..”**	same has been omitted by mistake.
5	**9(1)(d)**	Income of individual to include income of spouse, minor child and others.	Section 64(1A) provides that In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child, not being a minor child suffering from any disability of the nature specified in section 80U : **Provided** that nothing contained in this sub-section shall apply in respect of such income as arises or accrues to the minor child on account of any— (*a*)manual work done by him ; or (*b*)activity involving application of his skill, talent or specialised know-ledge and experience. *Explanation.*—For the purposes of this sub-section, the income of the	Section 9(1)(d) provides that total income of any individual shall include all income derived from any converted property which is received by the spouse or minor child upon partition of the Hindu Undivided Family of which the individual is a member. As per section 9(1)(b), read with section 9(5), generally the income of a minor child (other than a minor child being a person with disability or person with severe disability) shall be included in the total income of the parent.	***Clause (d) may be re-worded as under:-*** ***“all income derived from any converted property which is received by the spouse ~~or minor child~~ upon partition of the Hindu undivided family of which the individual is a member.”***	This section specifically deals with clubbing in case of minor (excluding specifically exempt minor). Further, section 9(1)(d) is meant to provide for clubbing in case of spouses. This clause is parallel to section 64(2)(c) of the present Act. When 64(1A) [parallel to present section 9(1)(b)] was specifically introduced to deal with minor’s income, the overlap was removed by amending section 64(2)(e). Same position may continue to avoid overlap of such clubbing which could create issues of interpretation. Thus, the reference to minor child in clause (d) is not required since clause (b), in any case, provides for clubbing of income of a minor child in the hands of the parent.

			minor child shall be included,— (*a*)where the marriage of his parents subsists, in the income of that parent whose total income (excluding the income includible under this sub-section) is greater ; or (*b*)where the marriage of his parents does not subsist, in the income of that parent who maintains the minor child in the previous year, and where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do. Further section 64(2)(c) provides that where the converted property has been the subject matter of			

			partition (whether partial or total) amongst the members of the family, the income derived from such converted property as is received by the spouse on partition shall be deemed to arise to the spouse from assets transferred indirectely by the individual to the spouse and the provisions of sub-section (1) shall, so far as may be, apply accordingly;			
6	**17**	Avoidance of double taxation	The provisions of the proposed section 17 is not specifically provided for in the Income-tax Act,1961.	Section 17 provides that subject to the provisions of this Code,— (i) any income which is included in the total income of a person for any financial year shall not be so included again in the total income of such person for the same or any other financial year. (ii) any income which is includible in the total income of any person shall not be included in the total income of any other person, except where for the purposes of protecting the interests of revenue, it is necessary to do so.	**It is suggested that such powers may not be granted. However, if the same has to be granted it is suggested that the where recovery is to be made for protecting the interest of the revenue, the section must provide that the aggregate recovery should not exceed the total amount of tax payable.**	"Protecting the interest of revenue" is a very wide and vague term and therefore such powers can give rise to multiplicity of proceedings and huge demands in several cases. Such wide powers would be contrary to the basic principle of simplification for which the DTC is being formulated. In any event even if the same income is assessed in the hands of more than one assessee; the tax recovered should not exceed the tax on the income as that would amount to unjust enrichment.

7	**18(1)(e)**	Expenditure not to be allowed as a deduction.	Section 32AB(3)(iv) and section Explanation (1)(c) to 115JB(2) use the words "other than ascertained liability".	Section 18(1)(e) provides that in computing the total income of a person for any financial year, any provision made for any liability, if it remains unascertained by the end of the financial year shall not be allowed as a deduction.	**Section 18(1)(e) may be re-worded as follows:-** **"any provision made for any liability, if it ~~remains unascertained by the end of the financial year~~ IS A LIABILITY OTHER THAN ASCERTAINED LIABILITY"**	The words "other than ascertained liabilities" have been used in clause (c) of Explanation 1 to section 115JB of the Income-tax Act, 1961. As the interpretation of the words "other than ascertained liability" has been settled by law, the same words may be used instead of the word "unascertained". Also, the said provision goes against the concept of "accrual system of accounting". Further, AS -4- "Contingencies and events occurring after the Balance Sheet date" is totally being disregarded by proposed

						section 18(1)(e). It is thus suggested that the words "at the end of the financial year" be deleted. A situation may arise wherein at the end of the financial year there is a certainty that the liability would exist but the quantum of the same is unascertained. The same may be ascertained at a later date. Disallowing the same in the financial year to which it relates would not be fair and just. For example :- A firm XYZ has to get its tax audit done for the Assessment Year 2011-12. It appoints an auditor in May 2011. Although, on 31.03.2011 there is a certainty that liability would arise, the quantum of the same cannot be estimated.
8	**19**	Amount not deductible where tax is not deducted at source.	Section 40(a)(*ia*) provides that any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a	Section 19 lays down the situations where the amount on which tax is deductible at source shall not be allowed as deduction in computing the total income.	**It is suggested that:-** **1. Section 19 may be placed in the Chapter III. (II) (C) –Income from Business.** **2. The applicability of the section may be**	Section 40(a)(ia) of the Income-tax Act, 1961 lays down similar provisions but is more specific and is restricted only to certain payments like interest, commission or brokerage, rent, royalty, fees for

			contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid. Explanation.—For the purposes of this sub-clause,— (i)"commission or brokerage" shall have the same meaning as in clause (i) of the		**restricted to certain specific payments to be in line with the provisions of the current law.**	professional services etc. Further, that section is placed under the Chapter "Profit or gains from business or profession". However, placement of section 19 of the DTC, 2010 is made under general head of Computation of total income which implies that section is applicable to all amounts on which tax is deductible at source under Chapter XIII, including salary which may cause undue hardship. Further, section 19(2) of the Code provides that the deduction shall be allowed in any subsequent financial year in which tax has been deducted and paid. As now the proposed section will be made applicable to salary also, the same may cause undue hardship to the employer. Once the tax has been paid by the employee on his salary income in respect of which tax has not be deducted at source, he would not allow the same to be deducted again from his salary. Thus, such salary paid would not be allowed

			Explanation to section 194H; (ii)"fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9; (iii)"professional services" shall have the same meaning as in clause (a) of the Explanation to section 194J; (iv)"work" shall have the same meaning as in Explanation III to section 194C; (v)"rent" shall have the same meaning as in clause (i) to the Explanation to section 194-I; (vi)"royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;			as a deduction to the employer.
9	**Section 23(1)(f) read with Clause 5 of Nineteenth Schedule**	Deductions from gross salary	Section 36(1)(iv) provides that any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an	Section 23(1)(f) provides that any contribution made by the employer to the account of the employee in an approved provident fund, subject to a monetary limit of 12 % of the salaries is allowed as a deduction.	**The limitation of one lakh rupees imposed by Clause 5 of Nineteenth schedule should be removed OR** **In case the intention is to impose the limit of one**	Since the employees do not receive the contribution made by the employer in their hands, the effective tax rate in the hands of the employee in terms of the

			approved superannuation fund, subject to such limits as may be prescribed for the purpose of recognising the provident fund or approving the superannuation fund, as the case may be; and subject to such 8conditions as the Board may think fit to specify in cases where the contributions are not in the nature of annual contributions of fixed amounts or annual contributions fixed on some definite basis by reference to the income chargeable under the head "Salaries" or to the contributions or to the number of members of the fund; Clause 6 of Schedule IV- "Recognised Provident Fund" to the Income-tax Act,1961 provides that that portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognized provident fund	Further, clause 5 of Nineteenth Schedule of DTC provides that contributions made by the employer in excess of twelve per cent. of the salary of the employee or one lakh rupees, whichever is less shall be deemed to be income of the employee.	**lakh rupees, to remove inconsistency section 23(1)(f) may be re-worded as follows:** **"any amount of contribution by an employer, in the financial year, to an account of an employee in an approved provident fund, to the extent it does not exceed twelve per cent. of the salary of the employee OR RUPEES ONE LAKH WHICHEVER IS LESS"**	amount received to tax borne by them would substantially go up and therefore it is necessary to restore the original position of law in this regard. Further, there seems to be inconsistency between the provisions of section 23(1)(f) and clause 5 of the Ninteenth Schedule as the restriction of Rs. 1,00,000 does not find place in section 23(1)(f).

			as consists of – a) contributions made in excess of twelve percent of the salary of the employee, and b) interest credited on the balance to the credit of the employee so far as it is allowed at a rate exceeding such rate as may be fixed by the Central Government in this behalf by notification in the official gazette, shall be deemed to have been received by the employee in that previous year and shall be included in his total income for that previous year, and shall be liable to income-tax.			
10	**Income from Employment**	Income from Employment	Section 10(10C) provides that any amount received or receivable] by an employee of— (i)a public sector company ; or (ii)any other company ; or	There is no provision in respect of amount received under the Voluntary Retirement Scheme. Further, no relaxation is also given for the relief equivalent to the relief contained in Section 89 of the present Income tax Act.	**It is suggested that a relief similar to Section 89 may be provided for covering cases of arrears of salary and also compensation like VRS Payments.** **Further, a provision**	In case of an assessee, where the payments are received in lump sum, he would be liable to be taxed much higher than the person who would have received the remuneration as and when it becomes

			(iii)an authority established under a Central, State or Provincial Act ; or (iv)a local authority ; or (v) a co-operative society ; or (vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) ; or (vii) an Indian Institute of Technology within the meaning of clause (g) of section 375 of the Institutes of Technology Act, 1961 (59 of 1961) ; or (viia) any State Government; or (viib) the Central Government; or (viic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette79,		**should also be made for computing the additional tax payable by considering the contribution to the provident fund / pension fund, etc. as if these contributions were made in the respective years and therefore an employee who was deprived of taking the complete advantage of the monetary limit of the respective years due to lower salaries, is able to take the benefit on receipt of the arrears of salary.**	due. This puts an employee at a disadvantage as compared to other employees. If an employee has contributed sum to the PF, which is lower than the limit fixed U/s. 80 C or Section 69 of the DTC and is therefore has not taken complete advantage of these incentives in a year. Subsequently, his salary is revised with retrospective effect and he is given arrears, a major portion of the same is credited to his PF Account. However, in the year in which he receives the arrears, he has already exhausted the limit U/s. 69 and is therefore unable to take advantage of the additional contribution. It is suggested, that if the contribution is made out of the arrears, then the appropriate relief should be given to the employee as of the contribution is made during the year to which the arrears pertain. Please note that the

			specify in this behalf; or (viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf, on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees Provided that the schemes of the said companies or authorities or societies or Universities or the Institutes referred to in sub-clauses (vii) and (viii), as the case may be, governing the payment of such amount are framed in accordance with such guidelines (including inter alia criteria of economic viability) as may be prescribed Provided further that			concept of giving relief in case of receipt of arrears of income is accepted in respect of interest received on compensation for last several years. Attention is drawn to section 59 (4) read with section 58 (2)(c) of the Code.

			where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year Provided also that where any relief has been allowed to an assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under this clause shall be allowed to him in relation to such, or any other, assessment year Section 89 provides that where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of clause (3) of			

			section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the Explanation to clause (iia) of section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed Provided that no such relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i) of clause (10C) of section 10, a scheme of voluntary separation, if an exemption in respect of			

			any amount received or receivable on such voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee under clause (10C) of section 10 in respect of such, or any other, assessment year.			
11	**24(5)**	Income from house property	Section 22 provides that the annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".	The said sub-section provides that the provisions of this section shall not apply,- (a) to the house property, or any portion of the house property, which— (i) is used by the person as a hospital, hotel, convention centre or cold storage and (ii) forms part of Special Economic Zone, the income from which is computed under the head "income from business. (b) to a house property which is not ready for use during the financial year.	**Section 24(5) may be re-worded as follows:** **The provisions of this section shall not apply,-** **(a) to the house property, or any portion of the house property, which IS LET OUT AND—** **(i) is used by the person as a hospital, hotel, convention centre ~~or~~ ,cold storage, MULTIPLEXES, MALLS OR BUSINESS CENTRES ~~and~~ OR** **(ii) forms part of Special Economic Zone, the income from which is computed under the head "income from business"**	Section 24 only deals with income from letting of house property. To bring out the intention of section 24 clearly, it is proposed that the words "is let out and" be inserted. Multiplexes, Malls and Business centres also provide similar facilities like hotel and convention centre. Thus, the same may also be included in section 24(5)(a)(i). It seems that the word "and" has been written by mistake and the same should be changed to "or".

					(b) to a house property which is not ready for use during the financial year.	
12	**27(1)**	Deductions from gross rent	The proviso to section 23(1) provides that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him	Section 27(1) lays down the deductions for the purposes of computation of income from house property, namely:— (a) the amount of taxes levied by a local authority in respect of such property, to the extent the amount is actually paid by him during the financial year; (b) a sum equal to twenty per cent. of the gross rent determined under section 26, towards repair and maintenance of such property; (c) the amount of any interest,— (i) on loan taken for the purposes of acquisition, construction, repair or renovation of the property; or (ii) on loan taken for the purpose of repayment of the loan referred to in sub-clause(i) ;	**It is suggested that the words "taxes levied by local authority" be replaced by "taxes levied by local authority or GOVERNMENT" in section 27(1)(a).** **Further, it is suggested that deduction in respect of unrealized rent should be provided in section 27 on the lines of provisions of present Income-tax Act, 1961.**	Restricting the deduction to taxes levied by the local authority may not be appropriate. Thus, it is proposed that the deduction should be provided in case of tax levied by the Government in respect of such property. Also, unrealized rent is a practical problem faced by the landlords especially as legal disputes may drag on for many years. Income not received should not be taxed. This position is well accepted presently.
13	**Section 27(3) read with section 18(2)**	Deductions from gross rent	There is no corresponding provision relating to the said issue in the existing law.	Section 27(3) provides that the interest deductible under sub-section (2) shall be reduced by any part thereof which has been allowed as deduction under any other provision of this Code. Section 18(2) provides that any amount	**It is suggested that section 27(3) may be deleted.**	Section 18(2) is a general section which applies to the Code as a whole which makes the existence of section 27(3) becomes redundant.

				allowed as a deduction under any provision of this Code shall not be allowed as a deduction under any other provision of this Code.		
14	**30(2) and 31**	30(2)- Income from business 31-business when treated distinct and separate	There is no corresponding provision relating to the said issue in the existing law.	Section 30(2) requires the assessee to compute income of each business separately for the purpose of computation of income under the head "Income from Business". Further, section 31 has defined distinct and separate business. As per section 31(2)(c), the business shall be deemed to be distinct and separate from other business if separate books of accounts are maintained or capable of being maintained. A question arises as to how it can be proved that the books are not capable of being maintained. Further, section 31(2)(a) lays down that a business shall be deemed to be distinct and separate from another business even in case the unit of the business is processing, producing or manufacturing the same goods as in the other business and such unit is located physically apart from the other unit. It is practically not possible for such assessees to maintain separate books of account for the unit in each and every location.	***(i) Section 30 and section 31 should be appropriately amended.*** ***(ii) As it is difficult to prove whether books are capable of being maintained or not, it is suggested that section 31(2)(c) may be re-worded as follows:*** ***"separate books of account are maintained ~~or capable of being maintained,~~ for such business"***	Even now, wherever required, separate books are being maintained though there is no specific requirement under the Income-tax Act, 1961. For instance, separate books are maintained by some enterprises for complying with AS-17 on Segment Reporting. In such cases also, issues arise regarding allocation of common administrative and managerial expenses. However, such compulsory requirement (under section 30(2) of the Direct Taxes Code) of maintaining separate books of account unit-wise in all cases would add to complexity without corresponding benefit. This would also not be in alignment with the concept of "block of assets" for computing depreciation. Furthermore, it is felt that there is no benefit of having separate books, when the

						total income is to be taxed. If at all such provision is considered necessary, it may be prescribed only in regard to units in SEZ, where such independent computation is necessary.
15	**33(1)(i)**	Gross earnings	The terminology used by the existing section 28 is different from the one used in DTC. Section 28 uses the words like the profit and gains, any compensation, income derived, cash assistance etc.	Section 33(1)(i) provides that the amount of any accrual or receipt from, or in connection with, the business shall form part of gross earnings	**Section 33(1)(i) may be reworded as follows:** **"the amount of any accrual or receipt OF INCOME from, or in connection with, the business".**	The use of phrase "the amount of any accrual of any income or receipt" may give impression that even capital receipts (say loan or equity received) are covered.
16	**33(2)(xx)**	Gross earnings	There is no corresponding provision in the existing Act.	As per the said clause, any amount accrued or received, whether as advance, security deposit or otherwise, from the long term leasing, or transfer of - (a) whole or part of any business asset; or (b) any interest in any business asset shall be included in gross earnings.	**The section may be deleted because liability cannot be income.**	The word transfer may have wide meaning. This may have the effecting of taxing mortgage loans also. Although, Section 35(2)(xliii) provides deduction only with respect to repayment of advance or security deposit in respect of long-term leasing, such deduction may not benefit where the business ceases to exist. Further, such future deduction would cause the

						tax payer to pay tax on certain capital receipt only to be recouped later when such loan is repaid serving no useful purpose except affecting his cash flow. Further, in Section 35(2)(xliii), the word "transfer" is not covered.
17	**35**	Determination of operating expenditure	Section 37(1) provides that any expenditure (not being expenditure in the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". Explanation.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an	Section 35 enlists the expenditures which are termed as operating expenditure and allowed as a deduction from business income. Further, section 35(2)(xliv) lays down that any other operating expenditure not covered in the list shall be allowed as a deduction.	**It is suggested that rather than enlisting the expenditures, general clause as provided in the present Act should be inserted. The list should be inclusive and not enumerative.** **There seems to be an infinite looping in section 34 and 35, when read with cross references to section32(3),34(1),35(1)(b), 35(3) which needs to be removed.** **Similarly, there seems to be looping in section 35(1) read with section 35(2) and section 35(2)(xliv). This sort of looping renders the drafting "clumsy" and may be avoided.**	Enlisting operating expenditures would lead to more and more litigations on the interpretation of the nomenclature of the expenditure. The same would lead to malpractices, as the assessee would for the purpose of avoiding litigation, try to adjust the expenditure under one head or the other. There are many such expenditures which are not specifically mentioned under section 35(2) like:- a) Management consultancy charges b) Brand image consultancy charges. c) Accident insurance

			offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. (2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.		**Further, it is suggested that in section 35(2)(xliv) the words "operating" be replaced by the words "business".**	of the employee. d) Rent of guest house. e) Payment to contract labour. f) Running and maintenance of two-wheeler. g) Sitting fees of director h) Pollution control expenses i) Dog maintenance charges and so on. A person who has incurred such expenditures would try to adjust the same under the heads mentioned from clause (i) to (xliii) of section 35(2) to claim deduction. This could spark off large amount of litigation. It surely cannot be the intent to disallow bonafide business expenditure. To expect that a draftsman can list out all foreseeable such expenses that may arise in today's rapidly changing business and technological environment is unrealistic. It may therefore be better to lay down the principles (as

						has been done in the present Act in section 37) and not attempt the sort of enumerative approach attempted. If this is done, litigation would also arise because where a specific provision exists; it may be held to override the general ambit of clause (xliv). For eg. where clause (xxv) "maintenance of guest house" is provided –a question would arise about the security for guest house. Numerous such issues can arise and therefore this approach may be avoided.
18	**35(2)(ii), (iii),(iv) and (v)**	Determination of operating expenditure	As per section 30 in respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed— (a) where the premises are occupied by the assessee (i) as a tenant, the rent paid for such premises;	The said clause provides that the rent paid for any premises if it is occupied and used by the person would be allowed as operating expenditure.	**It is suggested that the said sub-clauses may be re-worded as under:-** **"(ii) rent paid for any premises ~~if it is occupied and used by the person;~~** **(iii) current repairs to buildings ~~if it is occupied and used by the person;~~** **(iv) land revenue, local rates or municipal taxes in respect of premises ~~occupied and used by the person is actually paid~~;**	As per section 35(2) the amount of expenditure referred to in clause (a) of sub-section (1) shall be the amount of expenditure on or account of ……..which means that the clause reads as under:- [Section 35(1)(a)(i)] the amount of expenditure is laid out or expended, wholly and exclusively, for the purpose of business [section 35(2)] on account of

			and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs; (ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises ; (b) any sums paid on account of land revenue, local rates or municipal taxes ; (c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises. Explanation.—For the removal of doubts, it is hereby declared that the amount paid on account of the cost of repairs referred to in sub-clause (i), and the amount paid on account of current repairs referred to in sub-clause (ii), of clause (a), shall not include any expenditure in the nature of capital expenditure.		**(v) current repair of machinery, plant or furniture ~~used by the person;”~~**	[35(2)(ii)] rent paid for any premises if it is occupied and used by the person. The words “occupied and used by the person” create difficulty as the definition of person includes a company also. A legal person can use a premise (say a company using office space). However, can one say that a company or trust has occupied the premises. Proving that the premise is occupied by the company may be difficult.

19	**35(2)(ix) and (x)**	Determination of operating expenditure	Section 30(a)(c) provides that in respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises shall be allowed as a deduction. Section 31(ii) provides that in respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the amount of any premium paid in respect of insurance against risk of damage or destruction thereof shall be allowed as a deduction. Section 36 (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in	Clause (ix) provides that any premium paid to effect, or to keep in force, an insurance in respect of,— (a) any premise occupied and used by the person; (b) any machinery, plant or furniture used by the person; (c) stocks or stores belonging to the person; (d) the health of any employee of the person; and (e) any other asset owned and used by the person; would be treated as operating expenditure and be allowed as a deduction. Clause (x) provides that any premium paid by the person, being a federal milk co-operative society, to effect, or to keep in force, an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk, raised by its members to such federal milk co-operative society would be treated as operating expenditure and be allowed as a deduction.	**The said clauses may be re-worded as follows:** **"(ix)any premium paid to effect, or to keep in force, ~~an~~ any policy of insurance ~~in respect of,—~~** **~~(a) any premise occupied and used by the person;~~** **~~(b) any machinery, plant or furniture used by the person;~~** **~~(c) stocks or stores belonging to the person;~~** **~~(d) the health of any employee of the person; and~~** **~~(e) any other asset owned and used by the person;~~"** **~~Clause (x) provides that any premium paid by the person, being a federal milk co-operative society, to effect, or to keep in force, an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk, raised by its members to such federal milk co-operative society would be treated as operating expenditure and be allowed as a~~**	Any insurance premium paid in relation to the business should be allowed as deduction. In case the legislature intends to specifically disallow certain insurance premium, such disallowances may be specifically provided for. Otherwise, items not presently visualised would automatically be disallowed although that may not be the intention. Insurance is rapidly expanding to cover areas such as professional indemnity insurance, crop insurance, third-party insurance in case of accident etc. which certainly merit allowance. Further, under the present Act, deduction is provided in case of premium paid in respect of insurance of family of the employees also, which seems to be a fair provision. However, the same does not find place in Direct Taxes Code.

			section 28— (i) the amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession; (ia) the amount of any premium paid by a federal milk co-operative society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk raised by its members to such federal milk co-operative society; (ib) the amount of any premium paid by any mode of payment other than cash] by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme framed in this behalf by— (A) the General Insurance Corporation of India formed		~~**deduction.**~~	

			under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government; or (B) any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999); (ii) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;			

20	**35(3)(b)**	Determination of operating expenditure	The said deduction in DTC possibly falls within the scope of the provisions of section 37 subject to fulfilment of conditions specified therein.	The said clause provides that the loss of inventory, or money, on account of theft, robbery, fraud or embezzlement, occurring in the course of the business, if the inventory, or the money, is written off in the books of account shall be allowed as a deduction from business income;	**The said clause may be re-worded as follows:-** **"ANY loss ~~of inventory, or money~~, on account of theft, robbery, FIRE, fraud or embezzlement, occurring in the course of the business, if ~~the inventory, or the money~~, THE LOSS is written off in the books of account"**	Losses of assets, deposits or investments misappropriated, liabilities incurred on assessee's account, for eg. air tickets fraudulently booked and utilised etc. would not meet the strict test of inventory or money. A broader concept may be accepted as is the case today.
21	**35(3)(c)**	Determination of operating expenditure	As per section 36(viia) in respect of any provision for bad and doubtful debts made by— (a) a scheduled bank not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank], an amount not exceeding seven and one-half per cent] of the total income (computed before making any deduction under this clause and Chapter VIA)	The said clause provides that any amount credited to the provision for bad and doubtful debts account, not exceeding one per cent of the aggregate average advances computed in the prescribed manner shall be allowed as a deduction from business income, if certain conditions are specified.	**The said clause may be re-worded as follows:-** **"any amount credited to the provision for bad and doubtful debts account, not exceeding ~~one~~ CERTAIN per cent of the aggregate average advances computed in the prescribed manner if….."**	Percentage may vary from time to time. Thus mentioning specific percentage would not be appropriate. In any case, provisions made in accordance with the directions of a regulator like RBI should not be disallowed.

			and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before			

			the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent" had been substituted Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government: Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession." Explanation.—For the purposes of this sub-clause, "relevant assessment years" means			

			the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005; (b) a bank, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VIA); (c) a public financial institution or a State financial corporation or a State industrial investment corporation, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) Provided that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in this sub-clause shall, at its option, be allowed in any of the two consecutive			

			assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, of an amount not exceeding ten per cent of the amount of such assets shown in the books of account of such institution or corporation, as the case may be, on the last day of the previous year. Explanation.—For the purposes of this clause,— (i) "non-scheduled bank" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), which is not a scheduled bank; (ia) "rural branch" means a branch of a scheduled bank or a non-scheduled bank] situated in a place			

			which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; (ii) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) (iii) "public financial			

			institution" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1 of 1956); (iv) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951); (v) "State industrial investment corporation" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of this sub-section; (vi) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the Explanation to			

			sub-section (4) of section 80P;			
22	**35(4)(c)**	Determination of operating expenditure	There is no corresponding section in the Income-tax Act, 1961 relating to the suggestion made. The suggestion relates to the drafting of the provision of DTC.	Section 35(4)(c) lays down that the amount of operating expenditure allowable as deduction shall not include finance charges.	***In order to allow such finance charges as deduction, it is suggested that the section 35(4)(c) may be reworded as follows-*** ***"finance charges as mentioned in section 36(1)."***	Section 36(1) provides deduction for permitted finance charges. It is thus clear that such permitted finance charges u/s 34 would not be allowed as operating expenses u/s 35. However, the possibility of existence of finance charges, other than those mentioned under section 36(1) cannot be ruled out. Therefore, the disallowance under section 35(4) should be only in respect of finance charges covered u/s 36(1).
23	**35(4)(d)**	Determination of operating expenditure	Section 32AB(3)(iv) and section Explanation (1)(c) to 115JB(2) use the words “other than ascertained liability”.	Section 35(4)(d) provides that the operating expenditure shall not include any unascertained liability of the person.	**Section 35(4)(d) may be re-worded as follows:** **“any ~~unascertained~~ liability OTHER THAN ASCERTAINED LIABILITY of the person.”**	The words “other than ascertained liabilities” have been used in clause (c) of Explanation 1 to section 115JB of the Income-tax Act, 1961. As the interpretation of the words “other than ascertained liability” has been settled by law, the same words may be used instead of the word “unascertained”.
24	**36(2)(b)**	Determination	There is no corresponding	The said clause provides that the	**It is proposed that finance**	Such a blanket disallowance

		of finance charges	provision in the present Act.	amount of finance charges shall not include any amount of incidental financial charges for issue of convertible debentures or bonds or share capital;	**charges shall not include any amount of incidental financial charges for issue of convertible debentures and bonds and accordingly, the same shall be disallowed.** **Convertible debentures and bonds should not be treated on same footing as share capital. Such incidental financial charges should be allowed as deduction.** **Alternatively, the same may be included in the twenty-second schedule and allowed as deferred revenue expenditure allowance.**	of what would be considered as an essential and legitimate business expenditure will invariably provoke re-structuring of the issue costs to circumvent such disallowance. It is, therefore, desirable that an amortisation of such costs be provided for.
25	**38(2)**	Determination of depreciation	Section 50(2) provides that where any block of asset ceases to exist as such, for the reason that all the assets in the block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual	Depreciation is allowed over time on the written down value (WDV) when all the assets of a block have ceased to exist. However, surplus in a block is taxed immediately.	**It is suggested that profit or loss should be treated alike. Hence, when all assets of the block have ceased to exist, the WDV should be allowed as a deduction immediately.**	Disparity of treatment between the profit or loss of same revenue items may be removed.

			cost of any asset falling within that block of assets, acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short-term capital asset.			
26	**39(3)**	Determination of Initial depreciation	As per section 32 where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be :	The said clause provides that the deduction for depreciation in respect of such asset shall be restricted to fifty per cent. if the asset is used for the purposes of business for a period of less than one hundred and eighty days in the relevant financial year.	**It is suggested that either the condition of 50% be removed or balance 50% be allowed in the next financial year.**	In the absence of such provision the benefit of balance 50% is lost forever which is probably unintended.
27	**44(9)**	Meaning of actual cost	Section 50A provides that where the capital asset is	The said clause provides that in this section, deemed written down value of a	**The said clause may be re-worded as follows:-**	It seems that the intention is to use the words "upto".

			an asset in respect of which a deduction on account of depreciation under clause (i) of sub-section (1) of section 32 has been obtained by the assessee in any previous year, the provisions of sections 48 and 49 shall apply subject to the modification that the written down value, as defined in clause (6) of section 43, of the asset, as adjusted, shall be taken as the cost of acquisition of the asset.	business asset shall be the actual cost to the person or the previous owner, as the case may be, when he first acquired the asset as reduced by the aggregate amount of depreciation that would have been allowable to the person or the previous owner, as the case may be, for the preceding financial year as if the asset was the only asset in the relevant block of assets.	**"in this section, deemed written down value of a business asset shall be the actual cost to the person or the previous owner, as the case may be, when he first acquired the asset as reduced by the aggregate amount of depreciation that would have been allowable to the person or the previous owner, as the case may be, UPTO ~~for~~ the preceding financial year as if the asset was the only asset in the relevant block of assets."**	However, the word "for" has been used by mistake. The same may be corrected. This change would clarify the position in favour of revenue and avoid ambiguity.
28	**47(1)(n)**	Income from certain transfers not treated as capital gains	Section 47(xiii) (xiii) any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is	Section 47(1)(n) provides that income from the transfer of any investment asset by a sole proprietary to a company in case of succession of sole proprietary by company shall not be included in the computation of income under the head "Capital Gains" subject to satisfaction of prescribed conditions.	**Similar exemption provision be inserted in case of :-** **a) Any succession of firm by company.** **b) Any transfer from firm to company.**	The exemption u/s 47(1)(f) with respect to transfer of investment asset in case of business reorganization may not cover all situations of succession of firm's business by company. For example, if one of several businesses carried on by the firm is succeeded to by the company, the present provision does not exempt the same.

			succeeded by such company : Provided that— (a) all the assets and liabilities of the firm or of the association of persons or body of individuals relating to the business immediately before the succession become the assets and liabilities of the company; (b) all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the succession; (c) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and (d) the aggregate of the shareholding in the company of the partners of the firm is not less than			

			fifty per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession; (e) the demutualisation or corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for demutualisation or corporatisation which is approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992); Section 47(xiv) provides that where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset or intangible asset to the company : Provided that—			

			(a) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company; (b) the shareholding of the sole proprietor in the company is not less than fifty per cent of the total voting power in the company and his shareholding continues to remain as such for a period of five years from the date of the succession; and (c) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company;			
29	**48(1)**	Financial year of taxability	Section 47A. (1) Where at any time before the expiry of a period of eight years from the date of the transfer of a capital asset referred to in clause (iv) or, as the case may be,	Section 48(1) provides that the income from the transfer of an investment asset specified in column (2) of the Table shall be the income of the transferor in the financial year specified in column (3) of the Table.	**The language of section 48(1) may be amended appropriately** **"the income from the transfer of an investment asset specified in column (2) of the Table shall be**	In respect of cases specified in serial nos.2 and 3 the transferee should be liable to tax, as the transferor entity ceases to exist.

			clause (v) of section 47,— (i) such capital asset is converted by the transferee company into, or is treated by it as, stock-in-trade of its business; or (ii) the parent company or its nominees or, as the case may be, the holding company ceases or cease to hold the whole of the share capital of the subsidiary company, the amount of profits or gains arising from the transfer of such capital asset not charged under section 45 by virtue of the provisions contained in clause (iv) or, as the case may be, clause (v) of section 47 shall, notwithstanding anything contained in the said clauses, be deemed to be income chargeable under the head "Capital gains" of the previous year in which such transfer took place. (2) Where at any time,		**the income of the transferor (EXCEPT WHERE THE TRANFEROR CEASES TO EXIST) in the financial year specified in column (3) of said Table"**	

			before the expiry of a period of three years from the date of the transfer of a capital asset referred to in clause (xi) of section 47, any of the shares allotted to the transferor in exchange of a membership in a recognised stock exchange are transferred, the amount of profits and gains not charged under section 45 by virtue of the provisions contained in clause (xi) of section 47 shall, notwithstanding anything contained in the said clause, be deemed to be the income chargeable under the head "Capital gains" of the previous year in which such shares are transferred. (3) Where any of the conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset not charged under section 45 by virtue of			

			conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 shall be deemed to be the profits and gains chargeable to tax of the successor company for the previous year in which the requirements of the proviso to clause (xiii) or the proviso to clause (xiv), as the case may be, are not complied with. (4) Where any of the conditions laid down in the proviso to clause (xiiib) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the			

			requirements of the said proviso are not complied with.			
30	**51(2)(a) and (b) Read with section 314(102)**	Deduction for cost of acquisition etc.	As per section 2(42A) short-term capital asset" means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer…………………………	The said clauses use the terms "for a period more than one year" and " for a period of one year or less" Further section 314(102) defines "financial year" or "year" to mean the period of twelve months commencing from the 1st day of April of the relevant year in any other case;	**It is suggested that :-** **1. For the words "more than one year", the words "more than 12 months" be replaced.** **2. For the words "one year or less", the words "less than 12 months" be replaced.**	As the "financial year" and "year" are used interchangeably, the intention of law has not been brought out clearly. The intent over here is clearly not relating to financial year. Hence clarity is needed. [See comments regarding section 314(102)].
31	**53(6)**	Cost of acquisition of an investment asset.	There is no corresponding provision in the present Act. However, section 45(4) of the Act provides that the profit or gains arising from the transfer of a capital asset by way of distribution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as income of a firm, association or body of the previous year in which the said transfer took place	Section 53(6) provides that when an participant acquires an investment asset forming part of bundle of investment assets, his cost of acquisition would be determined based on the actual cost	**The section be modified to provide that fair market value on the date of distribution be considered as cost of acquisition**	By virtue of section 50(2)(d) r/w 314(267)(g), the fair market value on the date of distribution would be considered as full value of consideration in the hands of firm. However, considering only actual cost in the hands of partner leads to double taxation.

			and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.			
32	**53(7)**	Cost of acquisition of an investment asset	Section 55(3) provides that where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.	Section 53(7) provides that the cost of acquisition of the asset to the person or previous owner, if any, is incapable of being determined or ascertained, for any reason shall be NIL	**Appropriate amendment should be made in the said sub-section or the Board may be given power to prescribe rules in this regard. The assessee may also be given an option to consider fair market value as on a particular date.**	In case the cost of acquisition is not determinable, it should not lead to a conclusion that there is no cost. The cost may be indeterminable due to two factors • Time • Comparable instances may not be available. However, this should not eliminate the possibility of a fair value. Value as at 1.04.2000 should be allowed to be substituted.
33A	**58(2)(y) read with 59(3)(d)**	Gross residuary income	Section 10(10D) provides that any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than (a) any sum received under sub-section (3) of	As per the said clause the amount received under an insurance policy is proposed to be made taxable in the hands of the recipient as "income from residuary sources". Further Section 59 (3)(d) provides that the income so included will be deducted from the total income provided: a) Premium paid for any of the years does not exceed 5 % of	**It is suggested:** **a) The said amount be taxed as capital gains, giving benefit of the indexation as these are not fixed return investments. Further, premiums paid from year to year may be treated as cost of**	Since there is no fixed return on the investment made in the Life Insurance Policies, it would be appropriate to do inflation adjustment of the amount received on the insurance amount like any other capital asset and hence it would be appropriate to do

			section 80DD or sub-section (3) of section 80DDA; or (b) any sum received under a Keyman insurance policy; or (c) any sum received under an insurance policy issued on or after the 1st day of April, 2003 in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum assured: Provided that the provisions of this sub-clause shall not apply to any sum received on the death of a person: Provided further that for the purpose of calculating the actual capital sum assured under this sub-clause, effect shall be given to the Explanation to sub-section (3) of section 80C or the Explanation to sub-section (2A) of section 88,	the capital sum assured; and b) The amount is received upon completion of the original period of contract of insurance.	**acquisition giving indexation benefits.** **b) The provision should be done for Grand-fathering the policies taken prior to 1st April, 2011;**	adjustment of the cost of acquisition and levy tax accordingly. Further, since the insurance policies are long term investment, not giving an option to the assessee to vary the term in between, it would be necessary to provide protection to the existing insurance policies. At the time when original decision to make investment in LIP is done, the assessee would have certainly considered the tax free status of the amount receivable on maturity or otherwise and if therefore during the middle of the term, if the amount is made taxable, it would put such assessees to undue hardship.

			as the case may be. Explanation.—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person;			
33B	**Clause (46) of Sixth Schedule and point 6 of the Third schedule**	Income not included in the total income	There are no corresponding provisions relating to Tax deducted at source from receipt on account of life insurance policy under the present Act.	Clause (46) provides that any sum received by any person from an insurer in respect of a life insurance policy upon death of the insured person shall not be included in the total income of a person. Serial No.6 of the Third Schedule provides the rates for deduction of tax at source in the case payment made by a life-insurer in respect of a life insurance policy.	**It is suggested:-** **a) The taxability of the provisions relating to any sum received under a key man insurance policy be restored to its current position.** **b) However, in the case of assigned keyman insurance policies; any sum received by any person from an insurer upon death of the insured person should not be included in the total income of heirs of such person.**	a) A plain reading of clause (46) implies that the sum received under a life insurance policy in respect of key man insurance would not be included in the total income of the either the company or heirs of the key man as the case may be, which does not seem to be the intention of the law makers. It may be noted the said amount is taxable under the present Act by virtue of the provisions of section 10(10D). Keyman of any organization

					c) Serial no.6 of the table of the Third schedule should provide an exception in respect of sum referred to in clause (46) of the sixth schedule.	changes from time to time. Once the keyman is changed, the organization assigns the policy to the family of the former keyman, who continues to pay premium on the same. The insurance policy then becomes like any other life insurance policy. c) As the amount received by any person from an insurer in respect of a life insurance policy upon death of the insured person is not included in the total income, the provisions of tax deduction at source should not apply on the same.
34	**64 (4)**	Special provisions relating to business reorganization or conversion of a company into a Limited liability partnership.	Section 72A(6A) provides that where there has been reorganisation of business whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (xiiib) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and	Section 64 provides for continuation of the benefit of carry forward and set off of the current losses in the hands of the successor in the case of conversion or business re-structure. Section 64 also provides the conditions of continuity of business and continuity of ownership of 50 % or more of the voting stock / capital for the period of 5 years succeeding the conversion or business reorganization. Section 64 (4) provides that if the condition of the continuation of the	**It is suggested that the benefit be withdrawn in the year in which there is non-fulfillment of the condition.**	If the non-fulfillment of the condition happens 3 – 4 years subsequent to the conversion or re-organisation, it would upset already completed assessments for those years and would also expose the assessees to undue hardships in the form of past taxes and also the interest. Though this may be justified in some cases where the assessee is trying to misuse this provision, it

			the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor limited liability partnership for the purpose of the previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly : Provided that if any of the conditions laid down in the proviso to clause (xiiib) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor limited liability partnership, shall be deemed to be the income of the limited liability partnership chargeable to tax in the year in which such conditions are not complied with.	business (including the conditions to be complied with for a period of 5 years succeeding such conversion or re-organisation) then the benefit of carry forward and set off in the respective years itself would be rectified and denied.		would however, put to hardship a large number of genuine cases where the non-fulfillment of the condition for subsequent period is not by design but by way of change of circumstances over a period of next 5 years.

35	**66**	Aggregation of losses in case of certain companies	Section 79 provides that Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss 74 incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless— (a) on the last day of the previous year the shares of the company carry-ing not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred: Provided that nothing contained in this section shall apply to a case where a change in the	Section 66 of the Code proposes that the benefit of the "aggregation of losses" will be denied to a closely held company if such company fails to satisfy the test of continuity of ownership. The test of continuity of ownership is satisfied if a shareholders holding 51 % of the voting power as on the last date of immediately preceding year continues to hold the shares at the end of the relevant financial year.	**For avoiding any possibly misuse of transfer of shares over a period of 2 or more years, it is suggested that the provision as contained in present section 79 of the Income-tax Act be made for attaching the change in shareholding to the year to which the loss pertains and the year in which the aggregation is sought.**	The provision in the existing format is possible to be misused if the change in the shareholding is done in such a manner that part of the shareholding change in one year and balance in the subsequent years. Since this is not intended, the provision should be made for not permitting such misuse.

			said voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift : Provided further that nothing contained in this section shall apply to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.			
36	**68(3) and 18(2)**	Deductions from gross total income from ordinary sources	Similar provision is provided in 80A(4) and 80A(7). However, a general provision like the same provided in the DTC	Section 68(3) provides that any sum, which qualifies for a deduction under this Sub-chapter in any financial year, shall not qualify for deduction— (a) under any other provision of this	**It is suggested that section 68(3) may be deleted.** **Alternatively, the said**	Since a general provision which provides that any amount allowed as a deduction under any provision of the Code shall

			does not find place in the present Act. Section 80A(4) provides that (4) Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter under the heading "C—Deductions in respect of certain incomes", where, in the case of an assessee, any amount of profits and gains of an undertaking or unit or enterprise or eligible business is claimed and allowed as a deduction under any of those provisions for any assessment year, deduction in respect of, and to the extent of, such profits and gains shall not be allowed under any other provisions of this Act for such assessment year and shall in no case exceed the profits and gains of such undertaking or unit or enterprise or eligible business, as the case may be.	Code for the same or any other financial year; or (b) in the case of any other person. Further, section 18(2) provides that any amount allowed as a deduction under any provision of the Code shall not be allowed as a deduction under any other provisions of this Code.	**sub-sections may be re-worded as follows :** **Any sum which qualifies for a deduction CLAIMED AND ALLOWED AS DEDUCTION under this Sub-chapter in any financial** **year, shall not qualify for deduction—** **(a) under any other provision of this Code for the same or any other financial year; or** **(b) in the case of any other person.**	not be allowed as a deduction under any other provisions of this Code (section 18(2), already finds place in Direct Taxes Code, specific provision as mentioned in section 68(3) is not actually required. However, if the same is considered necessary then it is suggested that the language of section 68(3) may be amended. The said sub-section uses the word "qualifies for deduction" which means that if a payment qualifies for deduction under the Chapter of Tax incentives and also some other head of income, the same shall not be allowed in that other head of income even if it is not claimed under the Chapter "Tax incentives". This may cause undue hardship to the tax payer. To illustrate the same, take an example of donation to charitable trust that serve interests of employees of the organization. The said expenditure would qualify for deduction under section

			Section 80A(7) provides that where a deduction under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes" is claimed and allowed in respect of profits of any of the specified business referred to in clause (c) of sub-section (8) of section 35AD for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.			79 and also section 35(2)(xi) i.e. welfare of workmen and staff. If the company does not claim the same as a deduction under section 79, it may also not be allowed a deduction under section 35. Let us take another example. In case of the house property used by the Individual/ HUF for the purpose of business, the deduction in respect of interest on loan taken for that house property should be allowed as a deduction as finance charges under the head 'income from business'. However, the same may not be allowed as the same qualifies for deduction under section 74 even if the same is not claimed under that sub-section.
37	**69, 70, 71, 72 and 73**	Deductions from savings, life insurance, health insurance, education of children and limit on	Section 80C(1) provides that in computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted, in accordance with and subject to the provisions	Under these sections deductions are allowed for making investment in approved fund [Section 69], Life Insurance Policy premium [Section 70], Mediclaim [Section 71] and children education [Section 72]. Further, section 69 provides that the maximum deduction available for the investment in approved	**It is suggested that a combined limit of Rs. 1.80 lacs be provided for all the permissible investments / expenses, with possible sub-limit for medi-claim to make the deductions at par with the**	Since the intention is to restore the existing deductions granted, it would be most appropriate to restore the deductions in the same format in which it is presently granted.

		deductions under section 70,71 and 72.	of this section, the whole of the amount paid or deposited in the previous year, being the aggregate of the sums referred to in sub-section (2), as does not exceed one lakh rupees. Section 80CCC(1) provides that Where an assessee being an individual has in the previous year paid or deposited any amount out of his income chargeable to tax to effect or keep in force a contract for any annuity plan of Life Insurance Corporation of India or any other insurer for receiving pension from the fund referred to in clause (23AAB) of section 10, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income, of the whole of the amount paid or deposited (excluding interest or bonus accrued or credited to the assessee's account, if	fund is Rs. 1.00 lakh. Separate limit of Rs. 50,000 is given for Life Insurance Premiums, mediclaim and children education.	**existing provisions.** **Further, the repayment of housing loan be considered as eligible for granting the deduction.**	

			any) as does not exceed the amount of one lakh rupees in the previous year. Section 80CCD(1) provides that Where an assessee, being an individual employed by the Central Government [or any other employer] on or after the 1st day of January, 2004, or any other assessee, being an individual] has in the previous year paid or deposited any amount in his account under a pension scheme notified or as may be notified by the Central Government, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income, of the whole of the amount so paid or deposited as does not exceed,— (a) in the case of an employee, ten per cent of his salary in the previous year; and			

			(b) in any other case, ten per cent of his gross total income in the previous year. (2) Where, in the case of an assessee referred to in sub-section (1), the Central Government or any other employer] makes any contribution to his account referred to in that sub-section, the assessee shall be allowed a deduction in the computation of his total income, of the whole of the amount contributed by the Central Government or any other employer as does not exceed ten per cent of his salary in the previous year. Section 80CCE provides that the aggregate amount of deductions under section 80C, section 80CCC and section 80CCD shall not, in any case, exceed one lakh rupees.			
38	**71(2)**	Deduction from health	Section 80D(2) provides that where the assessee	The said sub-section provides that a person, being an individual or a Hindu	**Sub-section 2 of section 71 may be reworded as:**	The language of the existing sub-section (2) is not clear

		insurance	is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:— (a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme as does not exceed in the aggregate fifteen thousand rupees; and (b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee as does not exceed in the aggregate fifteen thousand rupees. Explanation.—For the purposes of clause (a), "family" means the spouse and dependant children of the assessee. (3) Where the assessee is a Hindu undivided family, the sum referred to in	undivided family, shall be allowed a deduction in respect of any sum paid during the financial year to effect or to keep in force, an insurance on the health of persons specified in sub-section (2) and in addition, in the case of an individual, any contribution made to the Central Government Health Scheme. Further sub-section (2) provides that the person referred to in sub-section (1) shall be – (a) the individual, spouse, or any dependant child or parents of such individual; and (b) in case of a Hindu undivided family, any member of such family.	**"The person referred to in sub-section (1) shall be ANY OR ALL OF THE FOLLOWING –** **(a) IN CASE OF AN ~~the~~ individual** **(i) INDIVIDUAL** **(ii) spouse, ~~or~~** **(iii) any dependant child ~~or~~ (iv) parents of such individual; and** **(b) in case of a Hindu undivided family, any member of such family."**	and may lead to confusion as to whether the deduction is allowed in respect of insurance taken for either of the dependent child or parents or for both of them. Changes are suggested to bring out the legislative intent with greater clarity.

			sub-section (1) shall be the whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in the aggregate fifteen thousand rupees.			
39	**72(1)**	Deduction for education of children.	Section 80C(xvii) provides that deduction shall be provided in respect of (xvii) as tuition fees (excluding any payment towards any development fees or donation or payment of similar nature), whether at the time of admission or thereafter,— (a) to any university, college, school or other educational institution situated within India (b) for the purpose of full-time education of any of the persons specified in sub-section (4); Section 80C(4) provides that the persons referred to in sub-section (2) shall be the following,	Clause 72(1) provides that a person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum actually paid during the financial year, if the sum is paid- (a) as tuition fee to any, school, college, university or other educational institution situated within India; and (b) for the purpose of full-time education of any two children of such individual or Hindu undivided family.	***Clause 72(1) may be redrafted as follows:*** ***"a person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum actually paid during the financial year, if the sum is –*** ***(a) paid as tuition fee to any university, college, school or other educational institution situated within India; and*** ***(b) for the purpose of ~~full-time~~ education of SELF OR SPOUSE OR any two children of such individual or ANY MEMBER OF Hindu undivided family."*** ***The heading of section 72***	Such deduction should not be restricted to sum incurred for children alone but may be extended to sum paid for education of self and spouse. Further, the purpose of the deduction should also not be restricted to full-time education. Part-time courses and distance education should also be brought within the ambit of this section. Also, since a Hindu undivided family cannot have any children, reference may be given to a member of Hindu undivided family.

			namely:— (a) for the purposes of clauses (i), (v), (x) and (xi) of that sub-section, (i) in the case of an individual, the individual, the wife or husband and any child of such individual, and (ii) in the case of a Hindu undivided family, any member thereof; (b) for the purposes of clause (ii) of that sub-section, in the case of an individual, the individual, the wife or husband and any child of such individual; (c) for the purposes of clause (xvii) of that sub-section, in the case of an individual, any two children of such individual.		***may be re-worded as "Deduction in respect of ~~Children's~~ education"***	
40	**74**		Deduction of interest on loan taken on house property	Section 24(b) provides that where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest	Section 74(1) provides that a person, being an individual or a Hindu undivided family, shall be allowed a deduction, in respect of any amount paid or payable by way of interest on loan taken for the purpose of acquisition, construction, repair or renovation of a house property	**It is suggested that:-** **a) to avoid undue hardship caused to a person using his house property for the purpose of business, it is suggested that clause (a)**	a) The words used in section 74(2)(a) are "not let out during the financial year" which implies that the person who has not let out the property and has used the same for his own

			payable on such capital: Provided that in respect of property referred to in sub-section (2) of section 23, the amount of deduction shall not exceed thirty thousand rupees : Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed, the amount of deduction under this clause shall not exceed one lakh fifty thousand rupees. Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed,	in the financial year in which such property is acquired or constructed or any subsequent financial year, subject to the conditions specified in sub-section (2). Sub-section (2) provides that the deduction referred to in sub-section (1) shall be allowed if— (a) the house property is owned by the person and not let out during the financial year; (b) the acquisition or construction of the house property is completed within a period of three years from the end of the financial year in which the loan was taken; and (c) the person obtains a certificate from the financial institution to whom the interest is paid or payable on the loan. Further, sub-section (5) provides that deduction allowed under this section shall not exceed 1,50,000 ruppees.	**of section 74(2) may be re-worded as under:-** **"the house property is owned by the person and ~~not let out~~ IS SELF OCCUPIED during the financial year;"** **b) to bring the language of section 74(2)(b) in conformity with section 74(1), section 74(2)(b) should be re-worded as under:-** ***"the acquisition, ~~or~~ construction, REPAIR OR RENOVATION of the house property is completed within a period of three years from the end of the financial year in which the loan was taken*"** **c) The provisions of current law may be restored and the deduction be allowed in respect of interest on loan taken from any person other than relative.** **However, if the same is not agreeable, the deduction should be provided at least in**	business would also be covered under this section. This would restrict the deduction in respect of interest on housing loan to Rs.1,50,000 which may not be the intention of the law makers. The provisions of the current law may be restored and deduction of actual interest paid be allowed in the said case. b) Section 74(1) provides that the deduction in respect interest on loan taken on acquisition, construction, repair or renovation of a house property shall be allowed. However, section 74(2)(b) provides the time period only for completion of acquisition or construction and not repair or renovation of such house property. Such anomaly may be removed. c) Clause (c) of section 74(1) restricts the person to take deduction in respect of loan taken from financial institutions only. However, in actual practice loan is being provided by other

			as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years: Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan. Explanation.—For the purposes of this proviso, the expression "new loan" means the whole or any part of a loan taken by the assessee		**respect of interest on housing loan taken from an employer even if such employer is not a financial institution.**	persons also including employers. Thus, the provisions of the current law may be restored.

			subsequent to the capital borrowed, for the purpose of repayment of such capital.			
41	**75**	Deduction for interest on loan taken for higher education	Section 80E(1) provides that in computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, any amount paid by him in the previous year, out of his income chargeable to tax, by way of interest on loan taken by him from any financial institution or any approved charitable institution for the purpose of pursuing his higher education or for the purpose of higher education of his relative.	Interest paid on the loan taken by a person for education of self, spouse or children is allowed as deduction. The deduction however, is restricted where the monies are borrowed only from "financial institution". The Financial Institution is defined to include a banking company or a notified financial institution.	**It is suggested that the said qualifying condition of loan borrowed from the financial institution alone may be removed for paving way for several self -help groups created or NGOs set up for financing the education of the children.**	There is an increasing trend of setting up NGOs and self help community based groups for funding the higher education of the children. These trusts provide for concessional terms for borrowing and interest. These trusts provide a very good alternative to the persons seeking to be educated. There is no reason for restricting the benefit of deduction if the interest is paid to such organizations. The condition of asking these small set ups to seek approval is very cumbersome.
42	**78(1)**	Deduction for medical treatment and maintenance of a dependent person with disability.	Section 80DD(1) provides that where an assessee, being an individual or a Hindu undivided family, who is a resident in India, has, during the previous year,— (a) incurred any expenditure for the	Clause 78(1) provides that a person, being a resident individual or a Hindu undivided family, shall be allowed a deduction in respect of : (a) any expenditure incurred during the financial year for the medical treatment, nursing or training and rehabilitation of a dependant person with disability; or	***It is suggested :*** ***a) Deduction of Rs.50,000 / Rs.1 lakh should be allowed for maintenance of a dependent disabled, irrespective of the actual expenditure.***	Maintenance of disabled dependent is not an easy task. There may be cases where there are no day to day medical expenditure but still a disabled person is being maintained on moral grounds. Disallowing the deduction in respect of such

			medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or (b) paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the specified company subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of a dependant, being a person with disability, the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of a sum of fifty thousand rupees from his gross total income in respect of the previous year: Provided that where such dependant is a person with severe disability, the provisions of this sub-section shall have effect	(b) any amount paid or deposited during the financial year under a scheme framed by any insurer and approved by the Board in this behalf, for the maintenance of a dependant person with disability Further, sub-clause (2) provides that the amount of deduction under sub-section (1) shall not exceed - (a) one lakh rupees, if the dependant is a person with severe disability; or (b) fifty thousand rupees, if the dependant is a person with disability.	***b) In order to avoid unnecessary litigation, the heading of the section may be re-worded as follows:*** ***"Deduction in respect of maintenance INCLUDING MEDICAL TREATMENT of a disabled dependent"***	cases is not justified. It may be noted that section 80DD of the Income-tax Act, 1961 provides for a flat deduction irrespective of the amount of expenditure incurred.

			as if for the words "fifty thousand rupees", the words "one hundred thousand rupees" had been substituted.			
43	**78(5)**	Deduction for medical treatment and maintenance of a dependent person with disability.	Section 80DD(3) provides that if the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2), an amount equal to the amount paid or deposited under clause (b) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.	Section 78(5) provides that the amount received by the person, under the scheme framed by any insurer for the maintenance of dependent person with disability, upon the dependant person with disability, predeceasing him, shall be deemed to be the income of the person for the financial year in which the amount is received by him.	**It is suggested that the amount received in these cases are nominal and thus must be exempt from tax. However, if the same is to be taxed, tax should be payable only in respect of amount which has been allowed as a deduction earlier.**	These situations are forced upon an individual and from macro point of view the amount received is immaterial. Such cases, thus, should be exempt from tax.
44	**78(6)**	Deduction for medical treatment and maintenance of a dependent person with	Explanation(b) to section 80DD provides that "dependant" means— (i) in the case of an individual, the spouse, children, parents, brothers and sisters of the	Sub-clause (6) of clause 78 provides that in this section, "dependant" means spouse, any child or any parents of the individual, or any member of the Hindu undivided family, if,- (i) he is mainly dependant on such	**Section 78(6) may be re-worded as follows:-** **In this section, "dependant" means spouse, any child, BROTHER, SISTER or any**	Section 80DD of the present Act, includes brother and sister of an individual in the definition of "dependent". To maintain status quo and to avoid undue hardship that may be caused in genuine

		disability.	individual or any of them; (ii) in the case of a Hindu undivided family, a member of the Hindu undivided family, dependant wholly or mainly on such individual or Hindu undivided family for his support and maintenance, and who has not claimed any deduction under section 80U in computing his total income for the assessment year relating to the previous year;	individual, or Hindu undivided family for his support and maintenance; and (ii) his income in the financial year is less than twenty-four thousand rupees;	**parents of the individual, or any member of the Hindu undivided family, if,-** **(i) he is mainly dependant on such individual, or Hindu undivided family for his support and maintenance; and** **(ii) his income in the financial year is less than ~~twenty-four~~ SIXTY thousand rupees;**	cases the words brother and sister may be inserted. Having regard to the current inflationary conditions in India, the limit of annual income prescribed, namely, rupees twenty four thousand per annum [under sub-clause (ii)] to fall within the meaning of dependent seems to be very less. Thus the limit under sub-clause (ii) to fall within the meaning of dependent may be suitably raised to at least rupees sixty thousand**.**
45	**79(3)**	Deduction of contribution or donations to certain funds or non-profit organizations	Explanation 3 to Section 80G provides that charitable purpose does not include any purpose the whole or substantially the whole of which is of a religious nature.	Section 79 deals with deduction of contribution or donations to certain funds or non-profit organizations. Sixteenth Schedule of the Code lays down the entities, donation or contribution to which would make the amount eligible for deduction, subject to fulfillment of certain conditions. Sub-section (3) provides that the deduction under this section shall not be allowed in respect of any amount of money paid to any person referred to in sub-section (1), if – (a) the amount is laid out or expended	**It is suggested that section 79(3) should be deleted and should be inserted as a qualifying condition for registration under section 98.**	If the deduction is allowed only if donation or contribution is made to entities specified in Sixteenth Schedule, then disallowing such deduction to the person on the grounds that the amount paid by him is used by the entity for specific purposes is unfair and unjust. Restriction for non-applicability of the amount received as donation or contribution for specific purposes should be

				during the financial year for any religious activity; or (b) any activity of the donee is intended for, or actually benefits, any particular caste, not being the Scheduled Castes or the Scheduled Tribes.		imposed on the donee and not the donor as post facto monitoring is not possible.
46	**89(2)**	Method of accounting	Section 145A(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. (2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assessees or in respect of any class of income. (3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of	**Method of Accounting** As per Clause 89(2), the Central Government may from time to time notify accounting standards to be followed by any class of persons or in respect of any class of income.	***Clause 89(2) may be redrafted as follows –*** ***"The Central Government may notify in the Official Gazette from time to time accounting standards, PRESCRIBED BY National Advisory Committee on Accounting Standards (NACAS) OR ICAI, to be followed by any class of person or in respect of any class of income."***	Accounting Standards to be followed by any class of person or in respect of any class of income should be those as prescribed by the National Advisory Committee on Accounting Standards (NACAS) or the Institute of Chartered Accountants of India. NACAS has been constituted under section 210A of the Companies Act, 1956, which stipulates that the Central Government may constitute an Advisory Committee on Accounting Standards to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under the Act. Such a provision would make it abundantly clear that a separate set of standards is not necessary.

			accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.			By its very definition, a standard should be broadly applicable and not separate for different purposes. The Finance Ministry and the ICAI have already constituted a Committee which is looking into the implications of the application of such prescribed standards on taxation. The proposals of this Committee may be considered.
47	**89(3)**	Method of accounting	Section 145A provides that 145A. Notwithstanding anything to the contrary contained in section 145,— (a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be— (i) in accordance with the method of accounting regularly employed by the assessee; and	The valuation of purchase goods and inventory for the purposes of determining the income chargeable under the head "Income from business" shall be- (a) in accordance with the method of accounting regularly employed by the person; and further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the person to bring the goods to the place of its location and condition as on the date of valuation.	***Hence, clause (b) of section 89(3) may be deleted.***	The complicated computation required for complying with the provisions of section 89(3)(b) will not generate any extra revenue as the impact of section 89(3)(b) is revenue neutral. Any benefit to revenue will lapse once the transitional period is over. The accounting standards prescribed under section 89(2) would prescribe the method of valuation. So there is no need for section 89(3)(b).

			(ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation. Explanation.—For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment; (b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received.			

Suggestions in regard to taxation of NPOs
- Chapter IV & Seventh Schedule

In formulating the direct tax code, a fresh approach to taxation of non-profit organisations (NPOs) has been adopted. As a result few important changes that have been adopted can be mentioned as under

- religious trusts - complying with certain conditions to be fully exempt for tax purposes
- other non-profit organisations (NPOs) – Excluding those notified in Seventh Schedule - to be taxed at 15% where the income exceeds Rs. 1 Lakh
- mandatory method of accounting prescribed
- requirements in regard to accumulation and investment modified - time limit for certain disinvestment also brought in
- Exemptions - protected by virtue of grand fathering provisions in regard to NPOs setup prior to 1961 omitted

There has been a long debate as to whether the NPOs merit concessional treatment. One view that has been gathering ground is that the medium of NPOs has been widely misused for seeking tax shelters and therefore no concession should be given. On the other hand, there is an equally strong view that NPOs perform a very vital function in channelising funds to those who need them most - and utilizing them for the purposes of education, medical aid, relief to poor and other objects of general public utility.

The DTC Bill seeks to avoid deciding on the controversy by prescribing a median rate of 15% on the income of such NPOs.

Considering the strong sentiment against taxing religious entities, all such bodies have been exempted in totality (Sch Seven - Cl. 39). In doing so however, one of the conditions that had been imposed is that it should apply its income wholly for "public religious purposes." This seems to be driven by an approach that religious and charitable purposes are mutually exclusive - because what is considered as religious seems to exclude acts of charity. It is respectfully submitted that this approach is flawed and not in the interest of society at large. Every religion encompasses within its teachings the virtues of providing relief to the sick and needy and also emphasises the virtues of learning / education. Therefore, it is imperative to clarify that religious trusts would be entitled to the exemption granted under Schedule Seven even if they undertake the above-mentioned charitable activity of education, medical aid, relief to poor. In the alternative, religious trusts that received enormous amounts of donations (running into hundreds of Crores of rupees) , may be compelled to apply these funds only for " public religious purposes" - which may effectively mean pujas and rituals. This would effectively deprive the poor and downtrodden of the benefit that would be provided to them by such religious trusts. Further, there is no discernible line of demarcation between religion and charity - as is exemplified by the activity undertaken by the well-known Trust Missionaries of Charity set up by the Noble Laureate Mother Teresa. (Cited only because it is well known - and its activities documented in public domain). Wikipedia cites its activities as "*Missionaries care for those who include refugees, ex-prostitutes, the mentally ill, sick children, abandoned children, lepers, AIDS victims, the aged, and convalescent. They have schools run by volunteers to educate street children, they run soup kitchens, as many other services as per the communities' needs. They have 19 homes in Kolkata (Calcutta) alone which include homes for women, for orphaned children, and for the dying; an AIDS hospice, a school for street children, and a leper colony. These services are provided to people regardless of their religion or social caste."* It would be difficult to decide whether this is a religious or charitable activity. It would appear that as per the DTC Bill 2010 - such activity would be subjected to 15% taxation to the extent of its surplus. One is not clear whether this is the intention.

Some of the other practical issues that need attention are the requirement that accumulation permitted u/s 95 is only for a period of 3 years. As has been pointed out in the submissions made on the specific sections, the period of accumulation that would be necessary for undertaking investment in items such as immovable property would normally be much higher.

Further, the manner of drafting seems to indicate that the period for which such investment can be held should not exceed three years. This does not seem to be the intention. Another it would appear that certain sums can be accumulated for a period up to 3 years - within which they may be invested in any of the assets specified in section 95. Once so invested, a separate period for the utilisation needs to be provided for. Utilisation by way of investment in immovable property would amount to application u/s 94(b) - but this aspect is not coming out clearly.

Another aspect which appears unintended, is that in regard to NPOs which were set up prior to 1961, certain grandfathering provisions and continuation of reliefs were included in the Income Tax Act 1961. Many of these NPOs continue to remain active even today - and they would be disentitled from continued exemption due to some of the inherent conditions prescribed in accordance with the law as it prevailed at the time of their establishment before 1961. Suitable carve-outs to enable continued exemptions for such entities may be incorporated in the DTC Bill 2010 as they were in the Income Tax Act 1961.

Apart from giving the section wise suggestions, this separate paragraph has been given in order to highlight that a review of the entire approach to taxation of NPOs needs to be undertaken. Therefore it was felt that rather than giving only section wise comments - it may be appropriate to request for a re-drafting of this entire Chapter IV after clearly determining the objective of taxing such entities and identifying the specific problem areas. Numerous conditionalities that have been introduced considered necessary to block certain misuse or abuse. A view needs to be taken about the extent of such misuse as against the hardship caused in genuine cases. A social cost benefit from a macroeconomic perspective is very much needed in regard to the sections rather than to involve large number of genuine charities in protracted litigation.

It is appreciated that there have been instances of misuse of the exemptions presently available. Much of this misuse seems to arise from the residuary head "other objects of general public utility." It is therefore suggested that the current provisions are well understood and have already been the subject matter of significant litigation. It may be best to leave these aspects as they are and bring into the tax net - (at 15% as currently proposed); all activity of NPOs which falls under the category of "other objects of general public utility." The suggestion is made on the understanding that the object of bringing such NPOs to tax is merely to prevent abuse of the concessions and not as a revenue collection measure. It is suggested that a clear concept of approach in this regard needs to be adopted. If the intention is to collect revenue; then it would be best to levy a tax of 15% on the surplus of all NPOs - without exception so that significant amount of litigation in regard to the nature of activity being carried on, and the issues in regard to eligibility to exemption would be avoided. Besides, the NPOs would have clarity - that they would have to pay 15% tax on the unspent surplus - when they undertake any activity whatsoever.

On the other hand, if it is recognized that NPOs perform a valuable social role to supplement the activity of the government, then the relief by way of concessional tax treatment should be made available in a clear and substantive manner - without hemming in such concession by conditionalities that a subjective, open to interpretation and which lead to significant uncertainties for such NPOs.

It is suggested that such a clarity of approach is needed. The restrictions in regard to

- permitted period for accumulation,
- nature of expenditure that is recognised (in S. 94),
- extremely harsh conditions in regard to what is perceived to be a benefit to an interested person (in S. 97), and

- the taxation of net worth in the event of violation of some of the conditions –

stem from the belief that these concessions are more often than not the subject matter of abuse. It is respectfully submitted that a proper study of the numbers would probably reveal that NPOs are indeed utilising vast sums of money and channelising them in a very responsible and appropriate manner with very high standards of governance. Suitable policy decisions may be taken accordingly and the provisions of Chapter IV may be redrafted in a simplified manner. In any case, our cause by clause suggestions are also given hereunder:-

48	**90(3)**	Applicability of this Chapter	The suggestion is based on the drafting of the said section of DTC Bill, 2010 so quoting the corresponding section of present Act is not required.	The said sub-section reads as follows: "The provision of this Chapter other than section 95, section 97, section 98, section 99, section 101, section 102 and section 103, shall not apply to a non-profit organization, being a public religious trust or institution."	**It is suggested that in order to avoid confusion the drafting of the said sub-section may be simplified.**	In this section double negatives "other than…." and "……shall not apply" have been used. It may be better to say what shall apply.
49	**92(1)**	Computation of total income of a non-profit organization	Section 145(1) of the present Act lays down that income chargeable under the head " Profits and gains of business or profession" or " Income from other sources" shall, subject to the provisions of sub-section (2) be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.	The said sub-section provides that subject to the provisions of section 8, the total income of any non-profit organization in relation to any charitable activity, during the financial year, shall be the gross receipts as reduced by the amount of outgoings, computed in accordance with the cash system of accounting.	**It is suggested that companies other than companies registered under section 25 of the Companies Act, 1956 should be given an option to compute their income as per cash system or mercantile system of accounting.**	There are numerous trusts which receive donations from outside India. For receiving donations these trusts have to submit their financial statements to the donor. As the same are based on cash system of accounting, they are not generally accepted globally. This causes undue hardship to the genuine Non-profit

						organizations which run mainly on donations from foreign countries.
50	**93**	Gross receipts of a non-profit organization	As per section 11(1B) where any income in respect of which an option is exercised under clause (2) of the Explanation to sub-section (1) is not applied to charitable or religious purposes in India during the period referred to in sub-clause (a) or, as the case may be, sub-clause (b), of the said clause, then, such income shall be deemed to be the income of the person in receipt thereof— (a) in the case referred to in sub-clause (i) of the said clause, of the previous year immediately following the previous year in which the income was received; or (b) in the case referred to in sub-clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived.	Section 93(1) enlists the items included in gross receipts from a charitable activity. Clause (h) of the said sub-section provides that any amount received in the last month of the immediately preceding financial year and was deposited in a specific deposit account account under Section 94(e) is treated as an income.	**It is suggested that the provisions of the existing Act may be restored.**	The amount received in the last month of the financing year and deposited in a specific deposit account under Section 94(e) is treated as an income and again it is treated as an outgoing. Thus, it is suggested to simplify by inserting a clause of providing exemption in respect of amount deposited in special deposit account.
51	**93(2)**	Gross receipts of a non-profit organization	Section 11(1)(d) provides that Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income in the form of voluntary	Section 93(2) enlists the items which would not be included in the gross receipts from a charitable activity referred to in sub-section (1).	**It is suggested that with regard to voluntary contribution with a specific direction, in the first instance, it should be treated as a gross receipt and then a specific clause be inserted in Section 94 to claim the same as**	If the said suggestion is not followed, then it will be difficult for the Assessing Officer to examine the direction of the donor if everything is excluded from the gross receipt.

			contributions made with a specific direction that they shall form part of the corpus of the trust or institution. As per Explanation to the said section in computing the fifteen]per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;		**specific exemption.**	
52	**94(b)**	Outgoings of a non-profit organization.	Section 11(1) provides that subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income— (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property; (b) income derived from property held under trust in part only for	Section 94(b) provides that outgoings during the financial year for the purpose of computation of the total income shall be the aggregate of – (a) ……………. (b) the amount paid for any expenditure, incurred for the purposes of carrying out any charitable activity; (c) ………………	**It is suggested that the said sub-section be re-worded as follows:-** **"the amount EXPENDED / APPLIED TOWARDS THE OBJECTS OF THE NON-PROFIT ORGANISATION ~~paid for any expenditure, incurred for the purposes of carrying out any charitable activity~~"**	The use of words "outgoings / paid" and "incurred" separately can create an impression that paid refers to actual payment. For those following mercantile system this would not be intended. Thus the words "expended/ applied" may be used instead. (PS: In the initial draft, this wording may have been adopted since "cash system of accounting" had been mandated in respect of all Non-profit organizations. This has now been changed so the phraseology may be suitably amended.) Further, the NPO should

			such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteent per cent of the income from such property; (c) income derived from property held under trust— (i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and (ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India: Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income; (d) income in the form of voluntary contributions made with			not enjoy the benefit if it applies the funds towards some item which is not covered in its object clause, even if such activity is considered as charitable purpose generally.

			a specific direction that they shall form part of the corpus of the trust or institution.			
53	**94(f)**	Outgoings of a non-profit organization.	Section11(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:— (a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years; (b) the money so accumulated or set apart is	Section 94(f) provides that any amount accumulated or set apart for carrying on any charitable activity— (i) to the extent of fifteen per cent. of the total income (before giving effect to the provisions of this clause) or ten per cent. of the gross receipts, whichever is higher; and (ii) invested or deposited in the modes specified in section 95, for a period not exceeding three years from the end of the financial year. be included in the aggregate amount of outgoings during the financial year for the purpose of computation of the total income.	**It is suggested :-** **a) the provisions of the existing law should be restored.** **b) the conditions specified in (i) and (ii) seem to be mutually exclusive. Thus, the word "and" be replaced by the word "or".** **c) the period of "three years" may be replaced with "five years".** **d) the words "for a period not exceeding three years" in clause (ii) may be appropriately amended. It should be specifically mentioned that if investment is made in immovable property to be used for charitable/religious purposes., there should be no pre-condition for time frame.**	a) Current provisions are well understood and reasonably applied. b) It seems that the words "and" has been used by mistake and thus be replaced by the word "or". c) Keeping in mind the existing inflation rate, it may be appreciated that for acquiring a sizeable asset, the period of 3 years may not be sufficient for accumulation of desired funds. Take for example, for providing vocational training to handicapped women, purchasing of equipments like computers, tables chair, UPS etc along with hiring a premises requires a huge amount of investment which requires amount to be spent at one go. However, piecemeal

			invested or deposited in the forms or modes specified in sub-section (5) Provided that in computing the period of ten years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded: Provided further that in respect of any income accumulated or set apart on or after the 1st day of April, 2001, the provisions of this sub-section shall have effect as if for the words "ten years" at both the places where they occur, the words "five years" had been substituted.			purchase every year is not a practical solution. Thus, it is suggested that the period of accumulation may be increased to five years. Also, for the purpose of purchase of land or building, the period of accumulation may be further increased to 7 years. d) Section 95 provides the modes of investments for the purpose of section 94. One such mode of investment mentioned therein is investment in immovable property. However, if this mode of investment is read with section 94(f)(ii) it would mean that the immovable property so purchased has to be disposed off within a period of three years, which cannot possibly be the intention of the lawmakers. Any sum invested in immovable property may not have any disinvestment requirement if the property so acquired is

						being utilized towards the objects of the NPO.
54	**95(1)(v)**	Modes of investment	Section 11(5)(vii) provides investment or deposit in any public sector company: Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,— (A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company; (B) such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;	The said clause provides that one of the modes of investments, required to be made under section 94, is "investment or deposit in any public sector company."	**The said clause may be re-worded as follows :-** **"(v) FIXED RETURN investment or deposit in public sector company"**	Investment in public sector company would include investment in shares also. To ensure that the money is invested in modes in which value does not fluctuate frequently, it is suggested that only fixed return investments should be referred to.
55	**97**	Use or application of funds or assets for the benefit of interest person.	Section 13(1)(c) provides that nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereofin the case of a trust for charitable or religious	Section 97 provides that funds or assets of the non-profit organization shall not be used or applied for the benefit of the interested persons. It further mentions the situations where the	**It is suggested that tax should be payable at the maximum marginal rate only on the amount which is unreasonably paid or the income which has not been unreasonably received. The whole exemption**	There are numerous situations where there can be a technical breach or an interpretation issue in regard to a perceived benefit. In such cases any such benefit should be

			purposes or a charitable or religious institution, any income thereof— (i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or (ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3) : Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a	funds or assets shall be deemed to be used or applied towards the benefit of an interested person.	**should not be forfeited.**	taxed at maximum marginal rate but merely because the situations are mentioned in section 97(2) exemption should not be forfeited. Take for example a settler gives his entire property to the trust. Out of courtesy a parking space to park his car whenever he visits the trust is earmarked by the Trust. Technically this may amount to the benefit of land being reserved / made available to the settler. In case such an extreme view is taken; merely because a piece of land is temporarily made available to him to park his car, exemption to the trust should not be forfeited. Take another example of a Warden of a Boarding attached to a School. The Warden being the manager of the Boarding is required to stay in the campus. However, by the virtue of the definition of interested person read with section 97(b), the

			mandatory term of the trust or a mandatory rule governing the institution.			exemption granted to the school shall be withdrawn. This would cause undue hardship to the bonafide assessees.
56	**98(1)**	Registration of non-profit organisation	The suggestion relates to the drafting of the provision of DTC Bill, 2010 and thus mention of corresponding section in Income tax Act is not required.	Section 98(1) provides that a non-profit organization shall make an application for its registration in the prescribed form and manner to the Commissioner. Section 314(169) defines the term "non-profit organization" and one of the condition to be fulfilled is that it is registered as such under section 98.	***It is suggested that the looping should be removed.***	It seems that there is indefinite looping as section 98(1) uses the term "non-profit organization" before registration and the definition of the term "non-profit organization" specifies that condition of registration is to be fulfilled for the organization to be termed as "non-profit organization".
57	**98(6)**	Registration of non-profit organisation	Section 12AA(3) provides that where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 (*33 of 1996)* and subsequently the Commissioner is satisfied that the activities of such trust or institution	The said sub-section provides that where the Commissioner is satisfied that the activities of the non-profit organisation are not genuine; or not being carried out in accordance with its objects; or not being carried out in accordance with any other law which is applicable to it or under	**It is suggested that:-** **a) Current position which is well understood and accepted be restored.** **b) Alternatively, violation if any, should be decided upon by the authority under that law.**	a) Anything transgressing objects is a ground for cancellation even today. Allowing the CIT to look into the other laws may result in giving excessively wide powers. b) The Commissioners may not be technically competent to decide on

			are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution: Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.	which it is registered or approved, he shall pass an order in writing cancelling the registration or withdrawing the approval.		issues whether any activity is in violation of any other law. If at all such a view needs to be taken as a requisite for grant of exemption; would be necessary that the appropriate authority under the law purportedly violated should give a finding to that effect before such a wide power can be enforced.
58	**101**	Consequences of conversion of a non-profit organization.	There is no corresponding provision of the Income-tax Act.	Sub-clause (1) of section 101 a non-profit organisation shall be liable to income-tax at the rate of thirty per cent. in respect of its net worth if— (a) it converts into any form of organisation which does not qualify as a non-profit organisation; (b) it merges with any form of organisation which does not qualify as a non-profit organisation; (c) it fails to transfer upon dissolution all its assets to any other non-profit organisation, within a period of three months from the	***It is suggested that the said clause be re-worded as follows:-*** **"Sub-clause (1) of section 101 a non-profit organisation shall be liable to income-tax at the rate of thirty per cent. in respect of ACCRETION TO its net worth if-** **(a) ……..** ***(b)* ……..** ***(c)* ……..."** ***Further, it is suggested that since the Non-profit organisation has already paid tax @ 15% on the whole of its total income, net worth as defined under clause (b) of sub-section (2) of section 101***	It may be noted that any NPO granted registration would not normally be permitted as per its objects to convert into a profit-making or commercial entity. However, if it ceases to be a Non-profit organisation on account of reasons mentioned under sub-section (1) of section 101; the Non-profit organisation has to pay tax @ 30% in respect of its net worth, It is to be noted that possibly it has already paid tax @ 15% on the whole of its total income as per paragraph C of the First Schedule to the Code.

				end of the month in which the dissolution takes place. Further, sub-clause (2) provides that in this section,- (a) net worth of the non-profit organisation shall be computed as on— (i) the date of conversion or merger, as the case may be, in a case falling under clause (a) or clause (b) of sub-section (1); and (ii) the date of dissolution in a case falling under clause (c) of sub-section (1); (b) "net worth" of the non-profit organisation means the aggregate value of the total assets of the non-profit organisation as reduced by the liabilities of such organisation computed in accordance with such rules of valuation as may be prescribed.	***should exclude the amount of income on which tax has already been paid. Else it would tantamount to double taxation.***	Take for example a trust is created in 2007 with a net worth of Rs.1,0lakhs In the year 2008 it receives a donation of Rs. 90 lakhs for the purchase of machinery for teaching handicapped persons. The said Grant has been fully utilized for purchase of such machinery and no balance funds are available. The net worth of the trust in the year 2010 is 125 lakhs due to accumulation of profits of Rs 25 Lakhs in the last 2 years. Now, if there is violation of any of the specified conditions and the exemption given to the trust is withdrawn in the year 2010, the trust would be taxed @30% on whole of Rs.125 lakhs and not the accretion of Rs.25 lakhs. It will thus be required to pay Rs 37 Lakhs as tax in that year – for which it does not have the funds. It is suggested that only profits arising subsequent to de-recognition and not the

						entire net worth should be brought to tax.
59	**102(1)**	Provisions of this chapter not to apply in certain cases	The suggestion relates to the drafting of the said provision of DTC and thus mention of corresponding provision in present Act is not required.	The said sub-section mentions that the provisions of this Chapter shall not apply to any person who……	**The said sub-section may be re-worded as follows:-** **"the provisions of this Chapter shall not apply to any person REGISTERED UNDER SECTION 98 who……"**	Specific reference to be made in section 102 that without the registration of a non-profit organization, the Chapter will not apply. Presently there is no reference of section 98 in section 102. As a result it appears that even without registration the entire chapter will apply to claim exemption.
60	**105(1) read with Second Schedule**	Preparation of profit and loss account for computing book profit	Section 115JB(2) provides that every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956) :	As per the said section every company shall, for the purposes of section 104, prepare its profit and loss account for the relevant financial year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956.	**The said sub-section may be re-worded as follows:-** **"Every company shall, for the purposes of section 104, prepare its profit and loss account for the relevant financial year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 OR THE APPLICABLE STATUTUE"**	Insurance companies, banks and electricity companies are required to prepare their accounts as per the provisions of their respective statutes. However, the language of proposed section 105(1) mandates every company to prepare its profit and loss account in accordance with Schedule VI of the Companies Act,1956, which would be difficult for the above-mentioned companies. Therefore, it is suggested that the accounts

						prepared as per the provisions of the relevant statute of above-mentioned companies should be accepted for the purposes of calculating Minimum alternate tax.
61	**105 (2)**	Preparation of profit and loss account for computing book profit	As per proviso to section 115JB(2) while preparing the annual accounts including profit and loss account,— (i) the accounting policies; (ii) the accounting standards adopted for preparing such accounts including profit and loss account; (iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :	The said sub-section provides that in this section the accounting policies, the accounting standards adopted for preparing such accounts including profit and loss account and the method and rates adopted for calculating the depreciation shall, in the case of a company, be the same as have been adopted for the purpose of preparing such accounts including profit and loss account laid by the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956.	**The said section may also be re-worded as follows:** **"In this section the accounting policies, the accounting standards adopted for preparing such accounts including profit and loss account and the method and rates adopted for calculating the depreciation shall, in the case of a company, be the same as have been adopted for the purpose of preparing such accounts including profit and loss account laid by the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 OR RELEVANT STATUTE".**	The reasoning remains the same as mentioned in point 60 above.
62	**105(3)**	Preparation of profit and loss account for computing book	Second proviso to section 115JB(2) provides that that where the company has adopted or adopts the financial year under the	The said section provides that where the company has adopted or adopts the financial year under the	**The said section may also be re-worded as follows:** **"Where the company has**	The reasoning remains the same as mentioned in point 60 above.

		profit	Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,— (i) the accounting policies; (ii) the accounting standards adopted for preparing such accounts including profit and loss account; (iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.	Companies Act, 1956, which is different from the financial year under this Code- (i) the accounting policies; (ii) the accounting standards adopted for preparing such accounts including profit and loss account; (iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant financial year.	**adopted or adopts the financial year under the Companies Act, 1956 OR RELEVANT STATUTE, which is different from the financial year under this Code-** **(i) the accounting policies** **(ii) ……………………..."**	
63	**106**	Tax credit for tax paid on book profit	As the suggestion relates to transitional provisions, there is no corresponding provision in the present Act.	Transitional provisions	**It is proposed that a provision may be inserted under section 106 to the effect that MAT credit balance as on 31 March, 2012 should be allowed to be set-off and carried forward in the Direct Taxes Code regime.**	The Direct Taxes Code is silent in relation to MAT credit brought forward from the last Assessment year under the Income-tax Act, 1961 for set off against the book profits under the Direct Taxes Code. Explicitly allowing such benefit will be equitable and will avoid

						litigation in this context.
					It is suggested that MAT credit should be allowed to be carried forward at the time of conversion of closely held company to a Limited liability partnership.	Provisions relating to Minimum Alternate Tax are presently not applicable to Limited Liability Partnership. Therefore, the MAT credit available to a closely held company converting into an LLP would lapse at the time of conversion. This would discourage the formation of LLPs which may not be the intended.
64	**109**	Dividend distribution tax	Section 1150(6) provides that notwithstanding anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2005 out of its current income either in the hands of the Developer or enterprise or the person receiving such dividend.	As per the said section every domestic company shall be liable to pay tax on any amount of dividend declared, distributed or paid.	**It is suggested that SEZ units should not be subject to DDT on the same lines as applicable under the current tax regime.**	Domestic company mentioned in section 109 would include SEZ units also. Accordingly, SEZ units would also be liable to pay DDT at the rate of 15% which may not be the intention.

65	**111**	Tax on branch profits	There is no corresponding provision relating to the said clause in the present Act.	As per the said section every foreign company shall in addition to income-tax payable, be liable to branch profits tax in respect of branch profits of a financial year.	**It is suggested that** **a) the term 'branch' should be specifically defined.** **b) Clarification should be provided whether the Branch Profit tax paid by the Foreign Company be allowed under Double Avoidance tax treaties.**	a) To avoid ambiguity of any other type of office or place of business in India being treated as a 'branch' liable to BPT it is suggested that the term 'branch' be defined. The applicability of BPT should be restricted to a foreign company which establishes a branch in India, which is registered under Part XI of the Companies Act, 1956. b) Further, it is not clear whether the Branch Profit tax paid by the Foreign Company be allowed under Double Avoidance tax treaties. The same may be clarified.
66	**112**	Tax on net wealth	Section 5(1)(i) of the Wealth tax Act, 1957 provides that wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee— (i) any property held by him under trust or other legal obligation for any public purpose	Section 112(1) provides that subject to the provisions of the code, every person other than a non-profit organization, shall be liable to pay wealth tax on the net wealth on the valuation date of a financial year.	**It is suggested that wealth tax should not be levied on religious trusts also.**	Non-profit organization does not include religious trust. Thus, it is suggested that apart from NPO's, religious trusts should also be excluded from wealth tax provisions.

			of a charitable or religious nature in India : Provided that nothing contained in this clause shall apply to any property forming part of any business, not being a business referred to in clause (a) or clause (b) of sub-section (4A) of section 11 of the Income-tax Act in respect of which separate books of account are maintained or a business carried on by an institution, fund or trust referred to in clause (23B) or clause (23C) of section 10 of that Act;			
67	**113**	Computation of net wealth	Section 3(2) of the Wealth tax Act, 1957 provides that subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the 1st day of April, 1993, wealth-tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company, at the rate of one per cent of the amount by which the net wealth exceeds fif-teen lakh rupees. Schedule III of the Wealth Tax Act, 1957 provides the rules for determining the value of assets.	Chapter X relating to charge of wealth tax requires the wealth tax is to be charged on the net wealth on the valuation date i.e market value is to be charged to tax.	**It is suggested that the tax may be charged on the net wealth valued at cost price rather than market price.** **However, if the same is not possible the assessee should be required to disclose the cost of the specified asset along with the market value.**	It seems that the basic purpose of including many items in the list of specified assets is to extract information rather than to raise revenue. In view of the same, specified assets should be valued at cost price and not market price.

68	**113(1)**	Computation of net wealth	Board's circular no. 663 dated 28-09-1993 clarifies the position under the Income-tax Act, 1961	The net wealth of a person referred to in sub-sections (*1*) and (*2*) of section 112 shall be the amount computed in accordance with the formula — A-B Where A = the aggregate of the value on the valuation date, of all the specified assets, wherever located, belonging to the person referred to in this section, computed in accordance with the provisions of sub-section (*5*); B = the aggregate of the value on the valuation date, of all the debts, owed by the person, which have been incurred in relation to the specified assets.	**For clarity purpose, the item 'B' should be reworded to exclude specifically 'wealth tax" from "debts owed by the person, which have been incurred in relation to the specified assets" Presently, the Board's circular no. 663 dated 28-09-1993 clarifies the position under the 1961 Act.**	This would result in wealth tax payable being set off against the assets which is probably unintended. It would also bring the provision in harmony with the law as it stands presently and protect the interest of Revenue.
69	**113(2)**	Computation of net wealth	Section 2(ea) defines "assets", in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means— (i) any building or land appurtenant thereto (hereinafter referred to as "house"), whether used for residential or commercial	Section 113(2) provides the details of the specified assets for computation of wealth tax.	**It is suggested that the said sub-section may be re-worded as under:- " The specified assets NOT HELD AS STOCK IN TRADE referred to in sub-section (1) shall be the following:-………"**	The specified assets mentioned in section 113(2)(c), (f) and (g) include any urban land, archeological collections, drawing, paintings, sculptures and watch exceeding Rs.50,000 respectively. These assests are proposed to

			purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include— (1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh rupees; (2) any house for residential or commercial purposes which forms part of stock-in-trade; (3) any house which the assessee may occupy for the purposes of any business or profession carried on by him; (4) any residential property that has been let-out for a minimum period of three hundred days in the previous year; (5) any property in the nature of commercial establishments or			be added while computing the net worth of the person even if they are held as stock in trade. In the case of other assets such as jewellery, bullion, furniture, motor cars, yacht and aircraft - such an exclusion is provided for. Excluding certain items of inventory and not others appears unintended and inequitable. Therefore exclusion at the threshold level - of all stock in trade is being suggested.

			complexes; (ii) motor cars (other than those used by the assessee in the business of running them on hire or as stock-in-trade) ; (iii) jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals : Provided that where any of the said assets is used by the assessee as stock-in-trade, such asset shall be deemed as excluded from the assets specified in this sub-clause ; (iv) yachts, boats and aircrafts (other than those used by the assessee for commercial purposes) ; (v) urban land ; (vi) cash in hand, in excess of fifty thousand rupees, of individuals and Hindu undivided families and in the case of other persons any amount not recorded in the books of account.			

			Explanation 1.—For the purposes of this clause,— (a) "jewellery" includes— (i) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel ; (ii) precious or semi-precious stones, whether or not set in any furniture, utensils or other article or worked or sewn into any wearing apparel ; (b) "urban land" means land situate— (i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been			

			published before the valuation date ; or (ii) in any area within such distance, not being more than eight kilometres from the local limits of any munici-pality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette, but does not include land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or the land occupied by any building which has been constructed with the approval of the appropriate authority or any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him or any land held by the assessee as stock-in-trade for a period of ten years from the date of its acquisition by him. Explanation 2.—For the removal of doubts, it is hereby declared that "jewellery" does not include			

			the Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government;			
70	**113(2)(c)**	Computation of net wealth	Provision mentioned in point above.	The said clause provides that any urban land would be treated as specified asset and be chargeable to wealth tax.	**It is suggested that the term "urban land" be defined in section 314.** **Further, it is also suggested that exemptions as provided in the present Act should also be provided for.**	To avoid future litigations, we recommend to have a clear definition of urban land in Section 314.
71	**113(2)(j)**	Computation of net wealth	There is no corresponding provision in the present Act.	The said sub-clause provides that any interest in a foreign trust or any other body located outside India (whether incorporated or not) other than a foreign company would be treated as specified asset and be chargeable to wealth tax.	**It is suggested that the said clause may be re-worded as under:-** **"any interest in a foreign trust or any other body located outside India ~~(whether incorporated or not)~~ IN WHICH RESIDENT IS A BENEFICIARY other than a foreign company AND LIMITED LIABILTY PARTNERSHIPS ."**	A non-resident non-citizen may hold an interest in an LLP (say a firm of Architects). That LLP having operations and therefore assets inclusive of office premises, guesthouses and residential flats for its executives in India may result in extending the liability to wealth tax to such individuals who may have no connection or stay in India. This appears inadvertent and may be excluded as per the changes suggested. Similarly, since charge of wealth tax is now levied on all persons irrespective of the residential status -

						the said provision may result in inadvertent liability to wealth tax if certain assets are even temporarily held or brought into India. For example -are non-resident, non-citizen lady, visiting India on the valuation date and carrying with her jewellery and watches for personal use valued at Rs 100 lakhs would technically be liable to file a return of wealth and pay tax on the jewellery and watches for personal use. Suitable exclusion may be considered.
72	**114**	Net wealth to include certain assets	There is no corresponding provision in the existing Act	Section 114 provides the situations where certain specified assets shall be deemed to be belonging to a person and be included in his net wealth.	**It is suggested that a provision similar to section 17(ii) of the code be made in respect of wealth tax also.**	Section 17(ii) of the Code provides that any income which is includible in the total income of any person shall not be included in the total income of any other person. A provision to the same effect may also be included in respect of wealth tax.
73	**124(5)(x), 124(5)(xiv)**	Interpretations in this Chapter	There is no corresponding provision in the existing Act	Two enterprises are deemed to be associated enterprises if services are	**It is suggested that any of the following alternate solutions may be considered:**	Merely transacting routinely with parties in a specified location makes

				provided "directly" or "indirectly" by one enterprise to the other or to persons specified by the other enterprise. In the absence of any clear cut guidelines on the issue determining whether services are provided indirectly, or at the behest of one enterprise, to a person specified by the other enterprise could involve a lot of litigation.	**a) this clause should be done away with to avoid inconvenience in compliance; or** **b) A threshold limit should be provided for exempting such transactions; or** **c) The concept of "related parties" as already applied under the Companies Act / Accounting Standards should be applied to bring about harmonization and less controversy. If at all it is necessary to expand the scope of the provision further than the Companies Act / Accounting Standards for definition applicable for tax purposes, related party concept laid down by AS-18 may be adopted as a base and other provisions may be provided in addition to the same.**	the transacting parties deemed to be associated enterprises for the purpose of transfer pricing regulations. Even a stray one-off transaction with an enterprise in a "specified location" (this term is generally thought to mean a "tax haven") would trigger transfer pricing provisions. There are many practical difficulties faced by the assessees while obtaining details / information about transactions of such enterprises in the specified location for the purpose of transfer pricing requirements (filling-in Form 3CEB, responding to notices, etc.). The concept of "related parties" is existing in the Accounting Standard-18- "Related parties disclosures" which is in harmony with the global practices. This is well understood, widely applied and is working smoothly. AS-18 deals only with

						related party relationships described in (a) to (e) below: (a) enterprises that directly, or indirectly through one or more intermediaries , control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries); (b) associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture; (c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual; (d) key management personnel5 and relatives

						of such personnel; and (e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise. All corporate entities (which constitute a significant volume of the tax impact in regard to such transactions) are already reporting in their financial statements - all related party transactions based on the above-mentioned definition. The clarity and commonality of approach would greatly simplify and reduce controversies since an entity which has it self-declared a party as a related party in its financial statements would not be in a position

						to take a different stand in tax proceedings if the same definition were adopted. Having different definitions leads to differing interpretations and significantly increased controversy and litigation. It is felt that the resultant gain or loss to revenue consequent upon such harmonisation may be negligible.
74	**124(5), (6) and (7)**	Interpretations in this Chapter	There is no corresponding provision in the existing Act	Section 124(5) defines the term "associated enterprise", section 124(6) defines the term "associated operation" and section 124(7) defines the term "associated person".	**It is suggested that the said definitions under sub-sections (5), (6) and (7) be merged into one and section 115 should give reference to only "associated person". Further, 26% should be taken as a common thresh hold.**	Same reasoning as above.
75	**141(5)(d)**	Power of survey	Section 133A(3)(iii) provides that a income-tax authority acting under this section may, record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.	The said sub-section provides that on entering the place, the income-tax authority may examine on oath any person if any statement would be useful for, or relevant to, any proceeding under this Code.	**It is suggested that the provisions of section 133A(3)(iii) of the Income-tax Act, 1961 may be restored.**	As per the present Act, under section 133A the Income Tax authority acting under that section may record the statement of any person which may be useful for, or relevant to, any proceeding under this Act. However, the Code enables the income-tax authority to examine on oath any person if any statement would be useful

						for, or relevant to, any proceeding under this Code. This would practically eliminate the distinction between search and survey. This distinction needs to be there because the level of control/ checks & balances as applicable in the case of a survey is much less. Further recording a statement on oath even without any evidence against the person surveyed goes against a fundamental concept that a person cannot be compelled to give evidence against himself.
76	**Section 179(3) and section 183(7)**	Form of appeal and limitation	Section 249(3) provides that te Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period. Section 253(5) prviodes that Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section	Section 179(3) provides that the Commissioner (Appeals) may admit an appeal after the expiry of the period specified in sub-section (2), if— (a) he is satisfied that the appellant had sufficient cause for not preferring it within that time; and (b) the delay in preferring the appeal does not exceed a period of one year.	**It is suggested that the restriction of one year may be removed.**	Condonation of delay is a judicial function which shall be left to the discretion of the judicial authorities based on the facts and circumstances of each appeal. Further, there may be delay due to the such reasons which are beyond the control of the assessee due to which appeal could not be

			(3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.	Further, section 183(7) provides that the Appellate Tribunal may admit an appeal, or a memorandum of cross-objection, after the expiry of the period specified in sub-section (4) or sub-section (5), if— (a) it is satisfied that the appellant had sufficient cause for not preferring it within that time; and (b) the delay in filing the appeal does not exceed a period of one year.		preferred within one year like severe illness etc. As there is no power with Commissioner (Appeals) or Appellate Tribunal, the assessee may have to approach the High Court by way of writ. The present law also does not place any such restriction. Thus, the said proposed restriction may be removed.
77	**182(6)**	Appellate Tribunal	Section 252(3) provides that the Central Government shall appoint the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof.	The said sub-section provides that the Central Government may appoint a person who is, or has been, a Chief Justice of a High Court to be the President of the Appellate Tribunal.	**It is suggested that the present practice may continue.**	Presently, a Member is selected as President after serving for more than 20 years in the Tribunal. A Member has to undergo transfer at least once in four years due to which when a person is selected as a President he is fully aware of functioning of various benches of Tribunal. Further, knowledge and awareness about the other members enables him to discharge his duties more efficiently which in turn leads to speedy dispensation of cases. Bringing an outsider, may affect the

						functioning of Tribunal. Also, it is felt that appointing a Chief Justice of High Court at Tribunal level may not be welcome to the person concerned and may thus lead to best talent not being available. However, if this is only an enabling provision and not a prerequisite - this aspect may we made clear.
78	**186(5)**	Constitution of benches and procedure of appellate Tribunal	Section 255(3) provides that the President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed five hundred thousand rupees, and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.	The said sub-section provides that the President shall, on a reference received from the Board for the disposal of any particular case, constitute a Special Bench consisting of five members or more, two of whom shall necessarily be judicial members and two accountant members.	**It is suggested that the said sub-section may be re-worded as follows:-** **"the President ~~shall~~ MAY, on a reference received from the Board for the disposal of any particular case OR CLASS OF CASES, constitute a Special Bench consisting of five members or more, two of whom shall necessarily be judicial members and two accountant members."**	The wording "shall" means whenever the reference is received from the Board the President MUST constitute a special Bench. It may amount to interfering with the judicial functioning of the President. Further, constitution of special bench for a particular case is a judicial function and necessary reference by administrative authorities for the same is unwarranted. Thus the word "shall" be replaced by the word "may".

						If at all such provision is required, reference from the board for constitution of a special bench should not be only for any particular case, but such power should also be given for special class of cases entailing conflict of a judicial opinion of different benches of ITAT.
79	**191(5)**	Revision of orders pre-judicial to revenue	Explanation (c) to section 263(1) provides that where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.	The said sub-section provides that the power of the Commissioner under sub-section (2) for revising an order shall not extend to such order,— (a) against which an appeal is pending before the Commissioner (Appeals); (b) as has been considered and decided in any appeal; or (c) as has been considered by, and passed in pursuance of the directions of, the Dispute Resolution Panel.	**It is suggested that the provisions of Explanation (c) to section 263(1) of the Income-tax Act, 1961 may be included in the Code also.**	Sub-section (5) restricts the power of the Commissioner for revising an order when against such order, appeal is pending before CIT(A) or he has decided an appeal against such order. From the said sub-section it may be inferred that in case an appeal is pending/decided by CIT(A), on a particular issue, no revision on any other issue arising out of that order would be permitted under section 191(1). However, this cannot be the legislative intent. Therefore, the provision is required to be modified suitably. Thus, it is suggested that the

						provisions of Explanation (c) to section 263(1) of the Income-tax Act, 1961 may be included in the Code also.
80	**191(8)**	Revision of orders pre-judicial to revenue	Section 263(1) provides that the Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.	The said sub-section provides that without prejudice to the generality of the foregoing provisions, an order passed by an income-tax authority shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if— (a) the order is passed without making inquiries or verification which, in the opinion of the Commissioner, should have been made; (b) the order is passed allowing any relief without probing into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 129; (d) the order has not been passed in accordance with any decision, prejudicial to	**It is suggested that section 191(8) be deleted.**	The said sub-section is giving very wide scope for revision of orders prejudicial to revenue. In respect of clause (a) it is felt that there is no end to the enquiries or verifications to be made for investigating a particular issue. Thus, giving wide powers to the Commissioner may cause undue hardship to genuine assessees. In respect of clause (b) it is felt that in normal course the Assessing Officer is not expected to "probe into a claim" He may if he so desires seek details or information. Even if he does so and allows the relief, it could be said that he has not "probed" into the claim. This requirement confers too wide a power on the Commissioner.

				the assessee, rendered by— (i) the Appellate Tribunal, High Court or Supreme Court in the case of the assessee or any other person under this Code, the Income-tax Act, 1961, or the Wealth-tax Act, 1957. as stood before the commencement of this Code; or (ii) a court under any other law; or (e) the order has been made following the order of a jurisdictional High Court but a special leave petition has been granted by the Supreme Court against the said decision of the High Court subsequent to the passing of the order.		From the wordings of clause (d), it can be inferred that any order shall be deemed to be erroneous and pre-judicial to the interest of the revenue if the same has not been passed by the Income-tax officer in accordance with any decision rendered by any court of law including ITAT, High Court, Supreme Court etc. However, a situation might arise where there are conflicting decisions of two different High courts or different benches of ITAT. The said situation has not been taken into consideration and would lead to confusion among the tax payers and tax administrators. Further, a situation may also arise where there is a decision of a single member bench may be against the assessee in another case which can be invoked, even though a favourable decision of a

						High Court is being followed. This would upset the entire law of precedents. Clause (e) provides for revision of order by Commissioner when SLP is granted by the Supreme Court against the decision of jurisdictional High Court subsequent to passing of the order. Such provision is contrary to the principle of legal precedents. Granting of SLP by Supreme Court against the order of jurisdictional High Court cannot dilute the binding force of jurisdictional High Court. An order of the High Court; unless expressly stayed does not lose its binding force merely because an SLP is admitted. A Commissioner cannot be empowered to revise the order over-ruling the decision of High Court simply on the basis that Supreme Court has

						granted SLP against the same. Moreover, such provision is contrary to the provision of Sec. 191(9), which states that no revision by commissioner is permissible when two views sustainable in law on a particular issue are possible. In short - it is submitted that the deletion of the 2 sub-sections will not in any way by dilute the revisionary powers of the Commissioner. What constitutes "an order prejudicial to revenue" is not presently defined and yet has been clearly interpreted and enunciated by the appellate authorities. The concepts in this regard are therefore well settled and adequately clear and therefore may not require such an inclusive and wide definition which would itself become the subject matter of litigation. The 2 sub-sections (8) & (9) may therefore be

						deleted.
81	**191(9)**	Revision of orders pre-judicial to revenue	There is no corresponding provision in the present Act.	An order passed by an income-tax authority shall not be considered to be erroneous in so far as it is prejudicial to the interests of the revenue, if— (a) the order has been made by holding a view sustainable in law; and (b) the Commissioner is not in agreement due to the existence of another view sustainable in law.	**It is suggested that section 191(9) be deleted.**	In light of deletion of section 191(8) as suggested above, existence of section 191(9) is irrelevant and thus should be deleted.
82	**200(A)**	No deduction of tax in certain cases	First proviso to section 194J(1) provides that Provided that no deduction shall be made under this section— (A) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or (B) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed (i) thirty thousand rupees, in the case of fees for professional services referred to in clause (a),	Section 200(A) mentions the cases where no deduction of tax is required.	**It is suggested that appropriate threshold limits say upto Rs. 50,000 for non-deduction of tax at source in respect of professional fees, royalty and non-compete fees be incorporated in section 200 of the Code also.**	1. The limits for non-deduction of tax at source has been fixed for all other expenditure/payments except for fees for professional and technical services. 2. No threshold limits have been provided for in respect of payment on account of royalty /non-compete fees, due to which any amount paid in form of royalty/non-compete fees would attract TDS provisions.

			or (ii) thirty thousand rupees, in the case of fees for technical services referred to in clause (b), or (iii) thirty thousand rupees, in the case of royalty referred to in clause (c), or (iv) thirty thousand rupees, in the case of sum referred to in clause (d) :			
83	**230(1)**	Penalties	271(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person— a)… b)…. (c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or…	The said sub-section provides that a person shall be liable to a penalty if he has under reported the tax bases for any financial year.	**It is suggested that the said sub-section may be re-worded as follows:-** **"a person shall be liable to a penalty if he has under reported the tax bases BY WAY OF CONCEALMENT OF PARTICULARS OF TAX BASES for any financial year."**	The Direct Taxes Code Bill,2009 provided that every person who has willfully under reported the tax base is liable to penal consequences. However, the word "willful" has been omitted in section 230(1) the DTC Bill, 2010. This omission would result in penal consequences in those cases also in which there is inadvertent error. Sub-section (10) seems to address the said issue but the same does not apply to sub-section (1) and hence the addition of the said words is requested.
84	**230(11)**	Penalties	The suggestion made relates to the drafting of the provision of DTC.	The said sub-section provides that the tax payable in respect of the	**It is suggested that to clarify the legislative intent, the language of the said sub-section may be**	From the plain reading of the said sub-section it appears that while

				aggregate amount of the addition or disallowance shall be the amount of tax calculated on the aggregate amount of the addition or disallowance made by the Assessing Officer, the Commissioner or the Comissioner (Appeals), as the case may be,— (a) at the applicable rate in the case to which Paragraph A or Paragraph B of Part I of the First Schedule applies; and (b) at the rate specified in Part I of the First Schedule or the Second Schedule, as the case may be, in all other cases.	**appropriately amended.**	calculating the amount of tax payable, the addition or disallowance should be considered as the only income and thereafter the applicable rate would apply. However, the same cannot be the intent of the legislature.
85	**232(2)**	Penalty for other defaults	Section 271A provides that without prejudice to the provisions of section 271, if any person fails to keep and maintain any such books of account and other documents as required by section 44AA or the rules made thereunder, in respect of any previous year or to retain such books of account and other documents for the period specified in the said rules, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of	**Penalty for other defaults** Section 232(1) enlists various defaults, which invite penal consequences. Section 232(2) provides for the minimum and maximum penalty, within which range, penalty can be imposed. The following are the broad classification of defaults based on range of penalty prescribed for such defaults.	**It is suggested that:-** **a) Discretion element in levying penalty should be removed. Penalty should be prescribed having regard to nature and gravity of default. It would be incorrect to treat as alike default for contravention of substantive provisions as compared to venial or technical breach of provision.** **b) Rates of penalty are generally very stiff and required**	Under the Income-tax Act, 1961 Chapter XXI provides separate penalty amount for each default. Penalty may be imposable at the discretion of the Assessing Officer within the given range of minimum and maximum penalty prescribed in the section. Under the DTC, minimum penalty prescribed for

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<td>penalty, a sum of twenty-five thousand rupees.

Section 271B provides that If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred thousand rupees, whichever is less.

Section 271C. (1) If any person fails to—

(a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or

(b) pay the whole or any part of the tax as required by or under—

(i) sub-section (2) of section 115-O; or

(ii) the second proviso to section 194B,

then, such person shall be liable</td>
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<tr><th></th><th>Broad description of default</th><th>Penalty prescribed</th><th></th></tr>
<tr><td></td><td></td><td>Mini. (Rs.)</td><td>Max. (Rs.)</td></tr>
<tr><td>1</td><td>Failure to keep and maintain books of account or to get accounts tax audited.</td><td>50,000</td><td>2,00,000</td></tr>
<tr><td>2</td><td>Failure to deduct / collect, or pay TDS / TCS or failure to pay the amount mentioned in notice of demand</td><td>25% of tax deductible/ collectible</td><td>100% of tax deductible/ collectible</td></tr>
<tr><td>3</td><td>Failure to furnish tax base return by due date</td><td>5,000</td><td>5,000</td></tr>
<tr><td>4</td><td>Failure to comply with the requirements of section 294-Mode of acceptance or repayment of certain</td><td>Amt equal to such loan or deposit taken or ace-</td><td>Amount equal to such loan or deposit taken or accepted or repaid.</td></tr>
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<td>to be scaled down to moderate rates.

c) The amount of penalty may be fixed on some reasonable basis which may be linked to either income or time and there should not be any discretionary power. Also clause (a) and (e) should provide for specific amount of penalty. The huge discretion should be done away with</td>
<td>various defaults classified in a group is neither dependent on loss to revenue nor on the nature and gravity of defaults nor on the strength of taxpayer. For instance, minimum penalty imposable under section 232(2)(a) at Rs. 50,000 would be same for default of not getting the accounts audited as also for default of not keeping expense bill of value exceeding Rs. 50/- being part of books of account.

Once again the reasonableness of the penalty imposable and the fact that it should be correlated to the gravity of the default cannot be lost sight of.

The penalty prescribed for failure under clauses (a) and (b) of section 232(1) ranges between Rs.50,000 and Rs.2,00,000. The said sub-section gives too much discretion to the Assessing Officer. It is possible that an</td>
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<td>to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Section 271CA. (1) If any person fails to collect the whole or any part of the tax as required by or under the provisions of Chapter XVII-BB, then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to collect as aforesaid.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Section 271D. (1) If a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.</td>
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<tr><td></td><td>loans</td><td>pted or repaid.</td><td></td></tr>
<tr><td>5</td><td>Any other case like- Failure to furnish TDS/ TCS returns including returns where no tax was deductible/ collectible; or to furnish TDS certificate, or non compliance of PAN/ TAN provisions; or failure to answer any question put up by the Assessing Officer; or to comply with terms of scrutiny notice; etc.</td><td>5,000</td><td>1,00,000</td></tr>
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<td></td>
<td>Assessing Officer may cause undue hardship to the assessee by imposing maximum amount of penalty.</td>
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			Section 271E. (1) If a person repays any loan or deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so repaid. (2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner. Section 271F. If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139 or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees.			
86	**256**	Scope of ruling and dispute resolution	There is no corresponding provision in the existing Act	As per serial No.4 & 5 of the Table in section 256 a Public sector company may seek a resolution of dispute relating to computation of tax bases or any other issue arising from (i) an appellate, penalty or rectification order of the	**It is suggested that the definition of public sector company should be made more wide to cover any institution such as society formed by Government resolution and governed and administered by Central/ State Government for eg. Malaria eradication society**	It is not clear whether the expression "any corporation" shall include entities like nationalized banks governed by the Banking Regulation Act, local authority like major port trusts established under Major Port Trusts

				Commissioner (Appeals); (ii) a revision, penalty or rectification order of the Commissioner in the case of a public sector company. A public sector company may seek resolution of any dispute relating to computation of tax bases or any other issue arising from the order of an Assessing Officer passed in pursuance of the direction of the Dispute Resolution Panel	**etc.** **Further, it is also suggested that only a public sector company where 100% beneficial/ controlling interest is with the Government should be allowed to seek resolution through Dispute Resolution Panel. For other public sector undertakings normal judicial course should apply.**	Act, State Housing Boards, Dock Labour Board, any non-profit organization administered by the Central or State Government, etc. Where companies are listed on a stock exchange; their legal remedies should not be curtailed merely because a majority of stake holder is the Government. Such a provision may be acting against the interest of minority shareholders.
87	**261**	Advance rulings to be void in certain circumstances	Section245T(1) Where the Authority finds, on a representation made to it by the Commissioner or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 245R has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been	(1) The Authority may, by order, declare an advance ruling to be void ab initio if it finds that the ruling has been obtained by the applicant by fraud or misrepresentation of facts. (2) Upon declaring the ruling to be void ab initio, all the provisions of this Code shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had	**It is suggested that sub-section (1) may be reworded as under :-** **" The Authority, may order, declare an advance ruling to be void ab initio if it finds, ON A REPRESENTATION BY THE COMMISSIONER OR OTHERWISE, that the ruling has been obtained by the applicant by fraud or misrepresentation of facts."** **Further, in the interest of natural justice a sub-section may be inserted in section 261 to provide that such order shall be passed after affording an opportunity to the applicant of**	The authority has no access to the fresh facts therefore either the Commissioner or the other party should bring the said ruling to the notice of the authority.

			made. (2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.	never been made. (3) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.	**being heard.**	
88	**268(3)**	Income-tax Settlement Commission	Section 245B(3) provides that the Chairman , Vice-Chairman and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts: Provided that, where a member of the Board is appointed as the Chairman , Vice-Chairman or as a member of the Settlement Commission, he shall cease to be member of the Board.	The said sub-section provides that the Chairperson, Vice-Chairperson and other members of the Settlement Commission shall be appointed by the Central Government from amongst the officers of the Indian Revenue Service who have served for at least twenty-eight years in the service, including at least five years in the rank of Commissioner or above.	**It is suggested that the said sub-section may be re-worded as follows:-** **"The Chairperson, Vice-Chairperson and other members of the Settlement Commission shall be appointed by the Central Government from amongst PERSONS OF INTEGRITY AND OUTSTANDING ABILITY, the officers of the Indian Revenue Service who have served for at least twenty-eight years in the service, including at least five years in the rank of Commissioner or above OR AN ACCOUNTANT MEMBERS WHO IS THE MEMBER OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA HAVING 20 YEARS OF EXPERIENCE IN PRACTICE.**	The words "the person of integrity and outstanding ability" have been prescribed for various quasi-judicial appointments and removal of the same sends a wrong message. Human resources from the profession of accountancy will enhance the effectiveness of the Commission and bring a sense of balanced approach and the constitution of ITAT benches is an emulatable precedent.
89	**273(3)**	Application for settlement of cases	Proviso to Section 245C(1) provides that that no such application shall be made	Section 273(3) provides that the application under sub-section (1) shall not be	**It is suggested that :-** **a) Clause (a) of sub- section (3)(a) be deleted.**	This clause will impose avoidable restrictions on the prospective

			unless,— (i) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees, (ii) in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees, and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application. Further section 245C(1D) provides that where the income disclosed in	made unless – (a) the assessee has furnished the return of tax bases which he is or was required to furnish under any of the provisions of this Code; and (b) the additional amount of income-tax payable on the income disclosed in the application exceeds,— (i) fifty lakh rupees in a case where proceedings for assessment or reassessment way financial year have been initiated in consequence of an action under section 135 or section 136, as the case may be; (ii) ten lakh rupees in any other case; and (c) the additional amount of income-tax or wealth-tax payable together with interest has been paid on or before the date of making the application and proof of such payment is submitted with the application.	**b) As the scope to file an application is also provided to be once in life time of the assessee, the threshold requires more liberal terms so that more assessees could avail the benefits of Settlement Commission and more so of equity.** .	applicants. This is also in conflict with Section 274 (a) (ii) which was taken from Income tax Act, 1961 where this kind of restriction was not there. Settlement assumes greater significance for persons who have not filed returns of tax bases. In view of high threshold limits it is better to encourage persons rather than discourage opting for settlement if the intention is to truly provide such an alternative route to get defaulters onto the right (laws abiding) track. If not, such provisions need not be there at all. In any event keeping very high threshhold limit amounts to discriminating between big tax payers and small tax payers. The scope to file an application is also provided to be once in life time of the assessee and therefore a lesser threshold level may be

			the application relates to more than one previous year, the additional amount of income-tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1B) and (1C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of income-tax payable in respect of the income disclosed in the application.	Section 274(a)(ii) provides that in the case where the income or wealth disclosed in the application relates to only one financial year and if the applicant has not furnished a return in respect of the total income of that financial year, tax shall be calculated on the income disclosed in the application.		considered.
90	**278(2)**	Payment of tax on settlement	There is no corresponding provision under the present Act	The said sub-section provides that the Settlement Commission may, on an application by the assessee, extend the time for payment of additional amount of income-tax or wealth-tax or allow the payment by installments if the assessee furnishes adequate security for such payment.	**It is suggested that the said sub-section may be re-worded as follows:-** **"the Settlement Commission may, on an application by the assessee, extend the time for payment of additional amount of income-tax or wealth-tax or allow the payment by instalments AND MAY REQUIRE ~~if~~ the assessee TO furnish~~es~~ adequate security for such payment."**	A mandatory requirement to furnish security and doing away of all discretion to the Settlement Commission will hamper the process in practical terms.. In any case, Supreme Court has the power to order for provisional attachment U/s279
91	**281**	Power of Settlement Commission after admission	There is no corresponding provision under the present Act	Section 281(2)(a) provides that the Settlement Commission shall, after an application has been made	**It is suggested that the following be added after clause (a)** **"Explanation: For removal of**	This explanation will prevent assessing officers from interfering in the efforts of the applicant to

				under section 273 and until a report under sub-section (3) of section 276 is made by the Commissioner or the time allowed for submission of the report under said section has expired, whichever is later, have concurrent jurisdiction with the Assessing Officer.	**doubts, it is clarified that the assessing officer shall not exercise his powers in relation to the matters before the settlement Commissioner during the time of concurrent jurisdiction"**	seek settlement.
92	**283(3)**	Power of Settlement Commission to grant immunity	As per Section 245H(1A) an immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted. As per section 245H(2) an immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any	The said sub-section provides that an immunity granted to a person under sub-section (1) shall stand withdrawn, if such person— (a) fails to pay any sum specified in the order passed under sub-section (1) of section 277 within the time allowed by the Settlement Commission; (b) fails to comply with any other condition subject to which the immunity was granted; or (c) had, in the course of the settlement proceedings, concealed any particular material to the settlement or given false evidence.	**It is suggested that the words "An immunity granted to a person under sub-section (1) shall stand withdrawn" be replaced with the words** **"An immunity granted to a person under sub – section (1) may be withdrawn by the Settlement Commission"**	Settlement Commission should have discretion to deal with applicant as there may be genuine difficulties in payment of dues extension of natural justice at the fag –end of the proceedings would scare the applicants to seek settlement in the first place.

			particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.			
93	**314(2)**	Interpretations in this Code	The term accountant has been defined under the Explanation below section 288(2)	As per the said sub-section the term "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 and includes any person who is entitled to act as an auditor of companies under sub-section (2) of section 226 of the Companies Act, 1956;	***The definition of the term "accountant" may be re-worded as follows:-*** **"accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 *HOLDING A CERTIFICATE OF PRACTICE ISSUED BY THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA CONSTITUTED UNDER THE CHARTERED ACCOUNTANTS ACT, 1949.* ~~and includes any person who is entitled to act as an auditor of companies under sub-section (2) of section 226 of the Companies Act, 1956~~;**	The second part of this interpretation is redundant as no one other than a Chartered Accountant is eligible to be appointed as an Auditor of a Company under the Companies Act. Hence, it is suggested that the definition of "accountant" be changed. The fundamental concept distinguishing a professional in pratice from other qualified professionals is that his professional body recognizes his eligibility to represent clients which is more than a mere qualification. Therefore,

						holding a certificate of practice is a necessary pre-requisite.
94	**314(102)**	Interpretations in this Code	There is no corresponding provision under the present Act	Section 314(102) defines "financial year" or "year" to mean — (a) the period beginning with the date of setting up of a business and ending with the 31st day of March following the date of setting up of such business; (b) the period beginning with the date on which a source of income newly comes into existence and ending with the 31st day of March following the date on which such new source comes into existence; (c) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be; (d) the period beginning with the 1st day of the financial	**Section 314 (102) may be re-worded as follows:-** **"financial year" ~~or "year"~~ means —** **(a) the period beginning with the date of setting up of a business and ending with CLOSURE OF BUSINESS OR the 31st day of March following the date of setting up of such business WHICHEVER IS EARLIER;** **(b) the period beginning with the date on which a source of income newly comes into existence and ending with the CLOSURE OF BUSINESS OR THE 31st day of March following the date on which such new source comes into existence WHICHEVER IS EARLIER;** **(c) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or**	The term " year" and " financial year" are not synonymous and should not be interchangeably used. The term "Year" should be defined (if so desired) as a period of twelve months. Wherever the word "year" is used, the correct meaning intended to be examined and suitable changes be effected [refer to section 51(2)]. The inclusion of the words "closure of business" is suggested to ensure that the financial year cannot continue beyond the existence of the entity itself. The firm includes Limited Liability partnerships also, where the change in constitution takes place quite often. As per Clause (d) and (e) of section 314(102) the financial year of an unincorporated body would change with the every change in the

				year and ending with the date of retirement or death of a participant of the unincorporated body; (e) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the 31st day of March following the date of the retirement, or death, as the case may be; or (f) the period of twelve months commencing from the 1st day of April of the relevant year in any other case;	**liquidation of the company, as the case may be; OR** ~~**(d) the period beginning with the 1st day of the financial year and ending with the date of retirement or death of a participant of the unincorporated body;**~~ ~~**(e) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the 31st day of March following the date of the retirement, or death, as the case may be; or**~~ **(f) the period of twelve months commencing from the 1st day of April of the relevant year in any other case;**	constitution. Thus, there would be as many Financial years as are the changes in the constitution. Hence it is suggested that clause (d) and (e) may be deleted. Instead to give effect to commonly accepted practice-there must be specific provision to the effect that if changes take place in the constitution of a partnership/ LLP ; the profits shall be deemed to accrue evenly and shall be apportioned to various stakeholders on a pro-rata basis (proportionate to time). This would avoid multiple assessments and simplify the procedure.
95	**314(86)**	Interpretations in this Code	Explanation 1 to section 139(1) provides that "due date" means— (a) where the assessee is— (i) a company; or (ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in	As per the said sub-section "due date" means— (a) in relation to the return of tax bases— (i) the 30th June following the financial year if the person is not a company and does not derive any	**It is suggested that the provisions of the Income-tax Act, 1961 relating to due date of filing return should be restored i.e. For the assessees requiring audit under any statute -30th September and** **for assessees not requiring tax audit- 31st July.**	In case of assessees who are required to get their accounts audited, accounts are required to be prepared 30 days prior, to get the necessary approval of the Board. In case the time is restricted to August, the same would mean that the

			force; or (iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, the 30th day of September of the assessment year; (b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year; (c) in the case of any other assessee, the 31st day of July of the assessment year.	income from business; or (ii) the 31st August following the financial year, in all other cases; or (b) in relation to any other return, such date as may be prescribed; (c) in relation to the report required to be furnished under section 88, the 31st August following the financial year.		accounts are required to be prepared and audited by July which may pose undue difficulty. Further, assessees other than company, who are required to get their accounts audited, belong to unorganized sector and preparing accounts in short time span and getting the same audited also is difficult for them too.
96	**314(116)**	Interpretations in this Code	There is no corresponding provision under the present Act	House property has been defined to mean (a) any building or land appurtenant thereto along with facilities and services whether in-built or provided separately; or (b) any building along with any machinery, plant, furniture or any other facility or services whether inbuilt or provided separately;	**Section 314(116) may be re-worded as follows:-** **(a) any building or land appurtenant thereto ~~along~~ with OR WITHOUT facilities and services whether in-built or provided separately; or** **(b) any building ~~along~~ with OR WITHOUT any machinery, plant, furniture or any other facility or services whether inbuilt or provided separately;**	On the plain reading of the definition, it appears that the facilities, services, plant, machinery or furniture would be treated as house property even if the same are provided without building or land. That would clearly not be the intention.
97	**314(191)(b)(iv)**	Interpretations in this Code	As per clause (iv) of the Proviso to section 17(2) 'nothing in this clause shall apply to any sum paid	The said clause provides that any premium paid or reimbursed by an employer	**The said clause may be re-worded as under:-** **"any premium paid or**	The said clause of Direct Taxes Code corresponds to clause (iv) of proviso to

			by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for the purposes of section 80D'	to effect or to keep in force an insurance on the health of an employee under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority will not be treated as a perquisite.	**reimbursed by an employer to effect or to keep in force an insurance on the health of an employee OR ANY MEMBER OF HIS FAMILY under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority".**	section 17(2) of the Income-tax Act,1961 wherein any premium paid or reimbursed by an employer to effect or to keep in force an insurance on the health of an employee or any member of his family also was excluded from the definition of perquisite. It seems that the same has been omitted by mistake and thus be amended.
98	**Clause 8 of the Third Schedule**	Rates for deduction of tax at source.	There is no corresponding provision under the present Act	The said clause provides that tax at source in respect of fees for professional services be deducted at 10%.	**It is suggested that clarification be given to the effect that re-imbursements of expenditure incurred for performance of duties would not be included in the fees for the purposes of tax deduction at source.**	Items of receipts which are not income are subjected to Tax deducted at source. Take for example an auditor (or Lawyer or any other professional), is paid audit fee of Rs.1,00,000 and is also reimbursed the travel expenses of Rs.1,50,000 incurred by him for travel of himself and his audit team. In this case the tax deducted at source by the auditee would be 10% of Rs.2.5 Lakhs i.e. Rs.25,000. In effect the auditor gets a fee of Rs. 1,00,000 on which Rs.

						25,000 is deducted at source. As the travel expenses are initially paid by the auditor and thereafter reimbursed by the auditee, no income arises to the auditor in this regard. Thus tax should not be allowed to be deducted from the amounts which represent re-imbursements.
99	**Clause 39. of the Seventh Schedule**	Persons, entity or funds not liable to income- tax	As per Section 2(15) "charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.	The said clause provides that any non-profit organization, being a public religious trust or institution, if— (a) it is registered under section 98 of this Code; (b) it is registered under a State Act, if any; (c) it applies its income wholly for public religious purposes; (d) it is established for the benefit of the general public; (e) it maintains books of account and obtains an audit report from a accountant if its gross receipts in any financial year exceed five lakh rupees; (f) its funds or assets are invested or held, at any time	**It is suggested that the term "public religious purposes" be defined to include medical relief, education and relief to poor"**	Large religious trusts do not even today apply these funds only for purely religious purposes. They apply them to relief to poor, education etc. These are inherent parts of religious objects. To give effect to clause (c) public religious purposes must be defined to include medical relief, education and relief to poor. This is also in the interest of society generally so that large sums of money collected in the name of religion are applied for the poor, the sick and needy rather than in only rituals.

				during the financial year in the modes specified in section 95; and (g) its funds or assets are not used or applied or deemed to have been used or applied, directly or indirectly, for the benefit of any interested person.		
100	**Column no (4) corresponding to Serial No. 1 of Fourteenth Schedule**	Determination of income on presumptive basis	As per sub-section 1 of section 44AE Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee, who owns not more than ten goods carriages at any time during the previous year and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of sub-section (2).	The said point mentions the conditions to be fulfilled by a person in respect of business of plying, hiring or leasing of heavy or light goods vehicle. It reads as under:- *" the total number of heavy goods and light goods vehicles owned by the assessee in the financial year should be ten percent"*	**The said condition may be re-worded as under:-** ***" the total number of heavy goods and light goods vehicles owned by the assessee AT ANY TIME DURING ~~in~~ the financial year should be ten percent"***	The said suggestion has been given to clearly bring out the intention of law.
101	**Form No.15G and 15H**		As per Rule 29C of the Income-tax Rules, 1962. (1) A declaration under sub-section (1) by an individual or under sub-section (1A) of section		**Forms on the lines of Form No. 15G and 15H may be introduced in the Direct Taxes Code Bill, 2010 also.**	Under the DTC a "deductee" will be required to approach the Department for a certificate if he or she wishes that no tax is to be

			197A by a person (not being a company or firm) shall be in Form No. 15G and shall be verified in the manner indicated therein. (1A) A declaration under sub-section (1C) of section 197A by an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year and is entitled to a deduction from the amount of income-tax on his total income referred to in section 88B shall be in Form No. 15H and shall be verified in the manner indicated therein. (2) The declaration referred to in sub-rule (1) or sub-rule (1A) shall be furnished in duplicate to the person responsible for paying the “interest on securities” or dividend or interest other than “interest on securities” or, income in respect of units or, as the case may be, any amount referred to in clause (a) of sub-section (2) of section 80CCA. (3) The person referred to in sub-rule (2) shall deliver or cause to be delivered to the Chief Commissioner or Commissioner, one copy of the declaration referred to in sub-rule (1) or sub-rule (1A) on or before the seventh day of the month next following the month in which the declaration			deducted at source. The same has not been dealt with by the Direct Taxes Code, 2010. This is bound to cause hardship as there are innumerable individuals in this country who earn marginally more than Rs.10,000 from bank interest but do not have to pay any tax or submit an income tax return because their "total income" is very much below R 2,40.000. These individuals, many of whom are old and infirm, will have to queue up in the income tax office to convince the ITO and obtain the requisite certificate thereby taking away the concept of tax payer convenience as imbibed in section197A of the Income-tax Act, 1961.

			is furnished to him.			

PART B: SUGGESTIONS ON PROPOSALS IN DTC WHICH DO NOT HAVE CORRESPONDING PROVISIONS IN THE PRESENT ACT

1. Controlled Foreign Corporation

The DTC Bill, 2010 makes provision for special tax treatment with respect to the foreign companies pre-dominantly owned by Indian Residents and engaged in the activities of earning income, which would generally be classified as "passive incomes". Though the need to have such regulations under Indian Tax laws cannot be overlooked, especially in view of liberalized foreign investment policies, it would be necessary to consider these regulations in a more comprehensive manner, rather than dealing with it merely from the point of view of taxing such investments like penal provisions.

The proposed regulations are required to be tested and examined from several angles, including the preparedness of Indian tax system to have such regulations at this time. As the Indian industry and economy has expanded and matured in recent times it is found, that confining your area of activity to a particular country not only enhances the risks but also curtains the vast opportunity offered in the global economy. It is also seen that due to robust growth of the Indian economy and Indian industry, as such, as compared to world economy, very attractive opportunities are arising for expanding the wings of businesses beyond the boundaries of the country. Any regulation which brings about uncertainty or hindrance in such investment activity at such crucial juncture would work as a set back to the entire activity and possibly Indian industry would miss out on this stellar opportunity. Hence it is essential that we examine these provisions minutely from a macro-economic perspective rather than as a mechanism of revenue generation or for plugging revenue leakage. It is therefore suggested that the proposed CFC Provisions therefore require wider deliberation that go beyond the canvas of fiscal legislation alone.

The ICAI'S suggestions in respect of CFC regulations, primarily address the issue from the following angles:

a) It gives a brief overview of the reasons leading to setting up of such CFCs in various genuine cases, which would easily meet the "objective criteria" for a CFC;

b) It deals with the unfavourable tax treatment given for the foreign investment and the tax drain which a foreign investment faces, necessitating the need to have a CFC for bringing reasonability of the taxation.

c) The suggestions also deals with the amendments that should be brought about either before bringing the CFC regulations or simultaneously with bringing the CFC regulations for paving way for tax efficient foreign investments. These suggestions include giving underlying tax credits, flat rate of tax for the foreign dividends, pass through status for the dividends declared out of foreign dividends, etc. The aim of these changes is to obviate the necessity to have a CFC for an enterprise and at the same time ensure that there is increased flow of funds back in Indian economy by way of dividends.

d) The suggestions also thereafter deals with various provisions of the bill which include the suggestions to remove uncertainties by giving quantitative definition of some of the terms used, excluding income from bona fide active operations even where the entity is classified as CFC, granting credits for the taxes paid by the CFC, definition of less taxed nation, etc.

ICAI therefore suggests that the entire issue of the CFC may be comprehensively examined. Introduction of the CFC regulation may be done in a phased manner after first introducing enabling provisions in the law for smoothening direct investment outside India. Once these provisions are stabilized, it may be proper to introduce comprehensive regulations in this regard. ICAI may give further submissions on this once the draft of the delegated / subordinate legislation is made available. However, presently, certain specific suggestions are also being tabulated as under:-

Schedule XX – CONTROLLED FOREIGN CORPORATION [CFC][1]

Proposal in DTC Bill,2010	**Suggestion of ICAI**	**Justification for suggestion**
SECTION 58(2)(U) Any amount of "attributable income" of a controlled foreign company ["CFC"] to a resident is included as income from residuary sources • Clause 4 of the XXth Schedule provides that once a company qualifies to be a CFC, then entire income of such CFC is taxable in India to the extent it relates to the share of the Indian Resident and to the extent the period for which such entity is a CFC in India • Clause 4 of the XXth Schedule does not make distinction between income earned out of bona fide business activity and other specified income. • It is possible that the CFC might have paid taxes on its income in the country of its residence / operation. There is no provision in the DTC for giving credit for such taxes paid	**General Suggestions** **1. Need for Paving way for enabling foreign investment without major tax inefficiencies** **2. During recent times, there is a very healthy trend seen where the Indian corporates have been expanding their wings beyond the country and have been setting up companies outside India, including acquiring companies outside India. It is necessary that at this juncture if we introduce the provisions like CFC without thoroughly examining all the aspects it may have an adverse impact on genuine cases of setting up a CFC outside India, it may substantially hamper the entire investment activities of Indian Corporates, causing irreparable damage to the growth of the Indian corporates and Indian economies. [Please see the annexures, why the CFCs are formed outside India]. Many cases where the foreign companies which are set up work for sourcing products internationally, sourcing technology internationally or sourcing the markets internationally. These are used more as enablers for expansion of Indian entities and we need to ensure that the Indian Tax**	Need to have provisions which enable the Indian Entity to make investments abroad without exposing them with huge tax liabilities of multi-level taxation and thus requiring them to set up holding company structures outside India and at the same time not to repatriate the income earned outside India to India. The prime reasons for such multiple taxation is denial of underlying tax credits in India [except where investment is made through Mauritius, Singapore, UAE, etc. Further, unlike dividend paid by a Company in India which is proposed to be taxed at 15 %, the dividend received from a foreign company would be taxed at 30 %.

1 Since there are no directly parallel provisions in the Income Tax Act 1961, the suggestions in regard to CFC provisions are given by way of a separate chapter - where the column relating to existing provisions is not included - for the purpose of better presentation.

113(2)(k) There is a provision that the value of any equity or preference shares held by a resident in a CFC is includible in net wealth for the purpose of levying wealth tax • Even where the entire investment by the CFC is in another entity which is in bona fide business, the wealth tax on such investment is still payable • No credit is proposed to be given for the taxes paid in the local jurisdiction, if any **291 (9)(c)** There is a complete treaty over-ride in respect of CFC regulation and the fundamental right of the assesse to choose the provision of the act or treaty, whichever is beneficial is given a go bye.	**laws enable such activity rather than hamper it. It is therefore also essential to examine the reasons why Indian corporates today are required to set up companies outside India, which may otherwise qualify to be a CFC under the proposed regulations. It should be kept in mind that the CFC regulations would affect the outbound investment and may not affect the in bound investment. Further, more tax is avoided in India by way of in bound investment, rather than outbound investment.** **3. It is therefore suggested that before introducing the CFC regulations, or at the time of introducing such provisions, the simultaneous introduction of the following provisions may please be considered:** **a) Granting underlying tax credits for the taxes paid by the foreign subsidiaries or foreign companies on its profits out of which the dividend is distributed. This would first of all obviate any necessity to have the foreign subsidiaries. This would also encourage the Indian Companies to repatriate profits to India by way of dividends as no double taxation would be attracted. A reference in this connection can be made to Section 50 A of the Singapore Income Tax Act, which gives unilateral underlying tax credits for the foreign dividends received.** **or** **b) In the alternative, a fixed rate of tax of 15 % may be introduced for the foreign dividends received. This is the same rate of dividend distribution tax that we levy for the Indian Company's levying tax.**	Illustration ABC Limited has a wholly owned subsidiary in USA which is incorporated as a Corporation. This company is subjected to tax in USA and on its income of US $ 100,000 pays tax of US $ 30,000. Balance US $ 70,000 it remits to India as dividend. For argument sake, it is submitted that there is no WHT in USA. The money so received in India, is taxed at the rate of 30 % [DTC Rate] and therefore tax of US $ 21,000 is paid on the said sum. This leaves a balance of US $ 49,000 in the hands of the Indian Entity. Total tax incidence is as high as 51 % on income earned. Further, when this balance sum of US $ 49,000 is distributed to its shareholders, it would still be liable to pay DDT of 15 %, which would work out to be approximately US $ 6,400, leaving only US $ 42,600 in the hands of the individual shareholders. The total tax incidence therefore would be as high as 57.4 %. **Comparison with Indian Subsidiary** If the same earning was that of an Indian Company's Indian Subsidiary,

	c) Dividend distributed by the Indian Company out of the dividend received from the foreign company be made not chargeable to tax U/s. 109 [DDT] of the DTC, being an exemption similar to that available to dividend received from Indian Subsidiary. **4. In case the CFC regulations on the lines presently proposed in the DTC is to be continued then the provision need to be made for the following:** **a) Provide the tax credit for the taxes paid by the CFC in its country of residence, as if the said tax is paid by the Indian Corporation to the extent the income is taxable in India. This is required to be given on a unilateral basis.** **b) The treatment for the tax credits granted by the country of residence of CFC is required to be provided for. Therefore, while giving credit for the taxes paid by the CFC in India, as requested in point (a) above, the credit in India should also be given to the tax credits granted by the CFC in its country of residence on account of foreign taxes paid on the income earned by it.** **c) The treatment of the tax credit in tri-partite arrangements is required to be examined. Since income which is earned by a resident of a country [CFC] would become taxable in India, there would be issues arising like which tax treaty would govern the taxation of such income in India in the hands of the Indian Resident. This aspect is required to be**	the tax incidence would be as under: Indian Sub's earning US $ 100,000 Tax thereon 30 % US $ 30,000 Balance sum of US $ 70,000 distributed as dividend to ABC Limited, having tax incidence of US $ 9,130 [DDT of 15 %] ABC Limited receives US $ 60,870 as dividend, which it distributes. No DDT is payable by ABC Limited [Section 109 (3) of the DTC] Therefore, money received by Shareholders of ABC Limited, would be US $ 60,870, effective tax being 39.1 %. You would see, that in the same circumstances, there is a huge tax differential, requiring the Indian Businesses to do aggressive tax planning for holding equity in foreign subsidiaries. 4(d) can be illustrated as under: A Ltd. is resident of country X with headline tax rate of 25% A Ltd is wholly owned by Mr. A who is resident of India A Ltd. receives Know-how fees from Country Y, wherein Country Y with WHT of 15 % A Ltd. pays tax of 10 % in Country X

	considered and provided for. The bill presently lacks clarity in this regard.	[25 % - 10 % WHT] due to either DTAA / unilateral tax credit Since tax paid in Country X being less than 50 % of the tax payable in India, A Ltd. would qualify as CFC When the know-how fees is included as income, there is no provision for giving credit for the 10 % tax paid in Country X and 15 % of WHT in Country Y. Suggestion per (a) deals with the tax paid in Country X, whereas suggestion per (b) deals with the tax paid in country Y. However, while granting credit referred to in (b) above, care must be taken that the cases like presumptive credit [See Regulation 8 of (Mauritius) Income Tax Foreign Tax (Credit) Regulations, 1996 granting 80 % of presumptive credit, even where no foreign tax is paid]
XXth Schedule-Clause 2 The Clause 2 of the Schedule deals with the year of taxability and reads as under: The attributable income referred to in paragraph 2 shall be included in the total income of the assessee for the financial year, the year in which	**There is a typographical error and the clause is required to be corrected as under:** **The attributable income referred to in paragraph 2 shall be included in the total income of the assessee for the financial year, the year in which the accounting period of the company ends.**	The language is required to be corrected for proper language.

the accounting period of the company ends.		
XXth Schedule-Clause 3 Clause 3 contains the formula of the income chargeable to tax in the hands of the Indian Resident. The broad principles followed is as under: • Entire income of the CFC is to be considered without excluding the income from active operations. • Only income for the period during which the company qualifies as the CFC is to be taken into consideration • The income is to be included in the hands of the Indian resident to the extent of his value of capital or voting share or interest, whichever is higher. Further, the income is to be included only for the period for which such person held such voting capital or voting share out of the total period for which the concern remained a CFC.	1. The term “value of capital” is undefined. If the value of the capital is not entitled to any interest in the income / asset of the company, then the same should not be considered. Plus the instruments which give fixed rate of return may also be excluded. 2. Just to ensure that people do not misuse the provisions, the call options / put options built into the capital structure may be adequately covered. A person may hold 49 % of the equity of a company and for balance 51 % or part thereof, he may have a call option to buy from a non-resident shareholder at pre-fixed price. This type of company may escape the CFC rigors. [It should be examined whether Clause 5 (b) adequately covers such situations.] 3. It may be appropriate to exclude the income earned by the CFC from **active operations** from the rigors of the provisions.	The provisions, if introduced should not affect the genuine cases, cause hardships in interpretations and should not allow any fresh loopholes / lacunae to be generated.
XXth Schedule-Clause 4 Clause 4 deals with computation of the attributable income of the CFC and the basic provisions provide as under: • Determination of profits of the CFC in accordance with the concept of commercial profits as per IFRS, I-GAAP, as the case may be	1. It would be incorrect to exclude only interim dividends from the profits. All dividends should be excluded from profits. Provision needs to be made that, if subsequent to inclusion of income of CFC in the hands of resident, if dividend is received by the resident out of such profits, then such dividend should be excluded from the total income.	It must be ensured that there is no double taxation of the same income

• The commercial profits are to be increased by the provision for unascertained liabilities / diminution in value of the assets • Amount of interim dividends paid be reduced from the profits so determined • Losses for the earlier period is to be reduced from the income so determined Profit so arrived is to be apportioned for the period during which the concern qualified as CFC.		
XXth Schedule-Clause 5 Clause 5 defines a CFC. A foreign company is treated as CFC if satisfies the following conditions: • It is tax resident of a country with lower rate of taxation; • The shares are not listed • One or more persons in India individually or collectively exercise control [50 % or more] over the company; • It is not in any active trade or business; • Specified income exceeds Rs. 25.00 lacs Control is defined to include • Possessing or entitled to possess 50 % or more of voting powers or capital of the company • Entitled to secure that 50 % or more of income is applied to their benefit • Dominant influence due to special relationship.	1. While the definition is very large to cover large number of cases, it gives much avoidable discretion to the AO as the terms "dominant control" or "decisive influence" is not defined. This being special provision, nothing should be left to interpretation and it would be advisable to put quantitative criteria [rather than qualitative] for determining the status. A shareholder having Veto Powers [though his shareholding may be only 40 %] on certain matters, may be classified as "decisive influence". This definition therefore requires to be clear. Possibly, the last two conditions can be altogether removed.	Definition of CFC is very important for the whole scheme. The inclusion or exclusion should not be left to discretion and it should be completely decided on the basis of quantitative criterion and be not left to any qualitative assessments.

Sufficient votes to exert decisive influence in a shareholder meeting.		
XXth Schedule-Clause 5(d) Clause 5 (d) contains the definition of "territory with a lower rate of taxation". It provides that if in a territory, the tax paid on income that accrue in any accounting period, in such territory is less than 50 % of the corresponding tax payable under this code, as if the said company was a domestic company.	The provision requires comparison of the actual taxes paid in the territory with the possible tax payable in India. In this computation it ignores the tax credits available to such entities in such foreign territory. The definition should provide that "tax paid under the law of that country or territory, without reducing there from any credits or rebates available on account of foreign taxes paid, in respect of …. In the alternative, the comparison should be only of the headline rates and not of the actual taxes paid. This concept is used in several tax jurisdictions. Further, adequate provision should be made for special provisions in several countries of Group Taxation, where a group of companies are taxed as single entity.	If the actual tax paid is to be considered, the credit for the withholding taxes of foreign territories should be duly recognized.
XXth Schedule-Clause 5(e) This clause defines the **Company which is not deemed to be in active trade or business.** The clause provides for the qualitative test for determining the nature of the activity the company is engaged in. Further, the provision also provides that if "income" from specified activity [which does not qualify to be active trade or business] is 50 % or more of the income earned from active trade activity then the company shall be considered as a CFC.	1. Comparison at "income" level would be incorrect comparison. 2. Sub-Clause H provide that if the income is pertaining to the supply of goods or services to a related entity then the concern would qualify as a CFC. There are several companies, which have set up global sourcing companies or global distribution companies outside India purely for business reasons and the tax is the remote consideration. These are actually functioning companies, but they supply entirely to related parties after procuring material from related / unrelated entities. Since we have already got elaborate transfer pricing provisions, such companies	1. A genuine manufacturing company may have a loss, but may still have income arising from interest, dividends, etc. Similarly, a company setting up a long gestation project may have interest or royalty income. By virtue of this temporary skewing in nature of income – the entity would suffer consequences of being a CFC. Accordingly, when an entity satisfies the qualitative test, no other test should be applied.

	would not be entitled to transfer the profits which ought to belong to India outside India. Accordingly, it would be unfair to cover this type of companies within the tax net. The logic as mentioned in H above would also apply to clause [I], especially when the financing is routed through a country for saving from the rigors of taxation of any other country outside India, there should not be any objection to bring such companies in the tax net in India by CFC regulation.	

Annexure to the Suggestion

The reasons why a foreign corporation is set up, which under the DTC likely to become a CFC and may be hit by the provisions.

The following illustrations would give a broad outline of the reasons why an Indian Corporate would want to set up an SPV outside India.

Sr. No.	Nature of the Foreign Corporation	Reasons why it could be set up outside India	Possible solution
1.	Investment Company for holding shares of the foreign subsidiary	For avoiding the duplication of taxation in the hands of the foreign operating company and Indian Holding Company, an SPV may be interjected in a country like Singapore, Mauritius or Cyprus	If India grants the unilateral tax credit for the underlying taxes paid by an operating company outside India or provide for the fixed rate of tax on the foreign dividends earned, it would be obviate the need to set up a foreign holding company. Further, there may be need to exempt from DDT, the Dividend distributed out of the Dividend received from foreign subsidiary.
		For borrowing funds outside India for a typical leveraged buy outs. Typically, in this scenario, since there are more alternative sources available for financing an acquisition outside India, it is necessary to have a company set up outside India.	From the definition of the CFC, the companies which have a pay out of interest to an unrelated party beyond say 50 % of its income, should be excluded. This would enable the corporate to expand their wings by internationally sourcing the funds available for acquisitions, without exposing them to the rigors of the CFC regulations. It may be kept in mind that for such set ups, the international financing institutions prefer finance hubs [which are having in any case concessional tax treatment for incomes in the form of Dividends, Interests, etc. and may therefore automatically qualify to be a less taxed jurisdiction].
		For housing the Joint Venture abroad. There are cases, where Indian Corporates have set up joint venture with individuals or corporates outside India. These joint ventures are in continents like Africa or countries like China. Due to uncertainties of law in these countries, an Indian Corporate is generally reluctant to set up its relationship with the joint partner in the host country. It is therefore advised that these joint ventures are set up in a third country as a holding company wherein the JV	In such a scenario, it would be advisable to increase the threshold of the CFC to be 75 % or more from the proposed 50 % or more. Cases of genuine joint ventures outside India or an SPV formed for the JV would be automatically excluded. Considering the potential Indian corporates have in African and Far East countries; it would be advantageous for the India at a macroeconomic level. Therefore the approach should be to support such enterprise or at the very least to ensure that there is no tax disadvantage created by Indian tax laws in genuine cases.

		Partners make investment and such SPV formed, makes investment in an operating company in the host country. The applicable law accordingly becomes the country selected to be an SPV.	
2.	For International Sourcing	Where there is a need to source RM from international sources, it is essential to have presence in a more global territory like UAE, Singapore, etc. This is necessitated by the fact that the global companies find it difficult to deal with Indian entities directly, when it comes to sourcing from small entities. The legal requirement for the documentation, customs formalities, etc. dissuade smaller companies to deal with Indian entities directly. Further, there are times [especially Africa] where the payments to the supplier is to be made by way of third party payments, which are not permitted under the India's foreign exchange regulations. It therefore becomes necessary that a global sourcing company is set up for procuring goods for one or more associated entities in India. Under Clause 5 (e)(ii)(H) of 20th Schedule, such global sourcing company would become a CFC.	Clause H may be deleted and a company which is engaged in genuine trading activity, including with that of the AEs, may be excluded from the provisions of the CFC regulations. We already have the provisions in the form of TP Regulations controlling the margins that can be kept by such companies and therefore again exposing such companies to CFC limitations would amount to overregulating such corporations. Kindly note that if there is an SPV formed outside India for international distribution or international marketing to third parties, the same is outside the CFC definition, even where such companies are in less taxed territories. Further, even where these companies entirely source their material from an Indian entity, they would still be out of CFC regulations, so long as they sell to an unrelated party.
3	For owning the intangibles and supplying to international associates	Some Indian Companies own the brands, patents and other intangibles in the form of know-how, secret processes (software), etc. which can be marketed internationally. At times, the Indian Corporates, for making the products available globally decide to part the intangibles in an international	As mentioned above, where the licensing is to the third parties there is no need to bring such corporations under the CFC regulations in India, unless the origin of the intangibles is in India and the licensing is to associate concerns. The licensing has to be placed and be treated in the same manner as purchase and sale of goods and therefore, once the TP regulations are applied, there is no need to bring such corporates under the CFC regulations for ensuring that the sector is not overregulated.

		company outside India and license the products from such company outside India. The main reason for setting up an SPV outside India, primarily for licensing the intangibles is for taking the advantage of international protection for the IPRs & intangible rights available under the laws of the concerned country. However, since the income of such company would be primarily from the royalty / licensing or sale of intangibles, it would become a CFC under Clause 5(e)(ii)(F) / (G) of 20th Schedule, even where the licensing is to unrelated parties.	It is incorrect to presume that such SPVs are formed for transferring income otherwise earned by an Indian Entity to an entity outside India. Such an approach may have been relevant a few years ago. However, in today's economic context, foreign corporates are increasingly seeking to invest in India because of better potential for returns. It would therefore not make economic sense for an Indian corporate to try and retain funds outside India. A change in this approach may be considered.

2. General Anti-Avoidance Rules

1. The proposed GAAR creates a very wide definition of tax avoidance and therefore a wide spectrum of instances of tax avoidance are covered. Hence, the proposed provisions may tend to have a 'shotgun' effect rather than being more specifically targeted to the really serious instances of avoidance. The diffusion of focus caused by attacking too wide a spectrum may reduce the efficiency and effectiveness of the GAAR from the very start. One of the features for introducing DTC was reducing litigations, but the scope of the GAAR provisions in the present draft could cause massive uncertainty and lead to extensive litigation as potential legitimate tax planning could also become the target of GAAR. At the very least, it should be made clear that the target of GAAR is 'contrived and artificial tax avoidance' and not legitimate tax planning or mitigation.

   Let's take for example a situation where a particular taxpayer is in need of funding and has the option of issuing preference shares with a fixed coupon rate or issuing debentures. In such a situation where there is no difference between the preference share coupon rate and the debenture interest rate, the taxpayer may opt for the issue of debentures on the expectation of getting a deduction for the interest expenditure. However, this decision could potentially trigger the GAAR provisions as the authorities could contend that the main purpose of this transaction was to obtain a tax benefit. Thus, the GAAR in its present form could introduce uncertainty into those transactions, which hitherto, would have been considered as 'plain vanilla' transactions.

2. The proposed GAAR allows the CIT to adjust any step or part of an impermissible avoidance arrangement. When such an adjustment is made, will the Revenue then look at the entire scheme and all the relevant parties to the scheme to ensure that no double taxation results from the application of GAAR? It is not clear

whether an adjustment or re-determination to part of a step in an arrangement will result in another section of the arrangement being re-characterized as abnormal.

3. One is also uncertain as to how the CITs will apply the GAAR provisions as the onus of proving that the 'main' purpose of a particular transaction was not obtaining a tax benefit, lies with the taxpayer. We are concerned that the 'presumption of purpose' provisions under section 125 of the DTC 2010 which are extremely broad in their determination and may lead to absurd results. These provisions also appear to be unfairly tilted towards the Revenue authorities as they would now merely have to show that the scope of the GAAR is very wide whereas the taxpayer has to demonstrate that his actions were not driven by the 'main purpose' of obtaining a tax benefit. The net result of these provisions is that the authorities have the power to re-characterize a transaction and subject a taxpayer to the rigors of the GAAR process even though there is no evidence or even a suspicion on part of the Revenue authorities of any tax avoidance by such taxpayer.

4. The definition of 'tax benefit' in the present draft of the GAAR also covers a reduction, avoidance or deferral of tax due to the applicability of a tax treaty. Further, the definition of 'impermissible avoidance agreement' covers a part or whole of an arrangement whose main purpose is to obtain a 'tax benefit'. A combined reading of both these definitions seems to suggest that a taxpayer who takes the benefit of the treaty provisions in respect of a particular transaction could be construed as having obtained a significant tax benefit and thus trigger the GAAR. This interpretation could lead us to absurd results as any action of claiming a tax treaty benefit by a taxpayer could potentially attract GAAR.

5. Section 125(2) of the DTC 2010 states that an arrangement shall be presumed to have been entered into for the main purpose of obtaining a tax benefit, if the main purpose of a step or a part of the arrangement is to obtain a tax benefit. This provision gives the flexibility to the Revenue authorities to ignore non avoidance steps in a composite transaction, and to isolate steps which they may consider to be undertaken for the purposes of obtaining a tax benefit. This provision appears to have been drafted to cover situations where taxpayers may attempt to camouflage tax avoidance.

   However, we are concerned at the cumulative effect of the provision which gives the Revenue Authority the freedom to ignore aspects of a composite transaction which do not support its case, while preventing the taxpayer from raising commercial factors which might support his contention that tax avoidance had not occurred. In our view, it would not be equitable to treat steps in a composite transaction in isolation (or ignore) if such steps have a commercial purpose. Without this safeguard, whenever legitimate tax planning is considered as however minor a part of a commercial transaction, there could be a 'step' whose main purposes is to obtain a tax benefit.

6. Further, no time limit has been mentioned in the DTC for initiation of GAAR. In our view a specific time limit should be incorporated in law for initiating proceedings under GAAR.

7. The GAAR, as drafted presently, confers a large number of discretionary powers on the CIT who has been given the authority under the DTC 2010 to invoke GAAR. In the recent past, it has rightly been the endeavor of the Government to reduce discretionary powers as it has been known to give impetus to misuse/ corruption. In keeping with the very healthy trend seen in recent legislation, the extent of discretionary powers conferred upon the CIT should be reduced and restricted wherever possible. By introducing GAAR in its present form, our concern is that the Legislature's authority would be undermined and a greater power

would be conferred upon the CIT who can virtually substitute his views for the experience and commercial wisdom of a businessman and thereby seek to tax transactions in any manner as he sees fit under the provisions of GAAR. Further he would view the transactions in hindsight. It would be appreciated that courts for good reason, have consistently held that the view taken by an assessee as a prudent businessman cannot be substituted by the judgement of a revenue officer. The present provisions; by casting the onus on the Assessee to prove that the main purpose of a transaction was not to obtain a tax benefit would significantly alter this position. In our view, if at all a review o a transaction is to be done; a separate independent body may be constituted and each proposed adjustment on account of GAAR should be approved by such body prior to the order being passed by the Revenue authorities. Such body should ideally comprise of members who have judicial experience and include businessmen and professionals of experience. This will ensure that GAAR provisions are not invoked by the Revenue authorities in a routine manner and the taxpayers are not subject to unnecessary hardship. Though DTC 2010 provides for a Dispute Resolution Panel (DRP) forum which can be approached by the taxpayer, we submit that such a mechanism as the DRP which comprises of a collegium of three Commissioner level officers may not be adequate. As the DRP would comprise of officials of the same rank and background as the person invoking the GAAR the commonality of background and perspective may prevent a view form a commercial perspective being appreciated. When GAAR can be invoked by a Commissioner level officer, it would be appropriate for the DRP to comprise of an independent body of judicial members and professionals with fiscal, tax, management and industry exposure experts as is followed by Australia. The composition of the DRP forum is crucial to bring in objectivity in application of GAAR provisions. Such a broadbasing of the members would also somewhat reduce apprehensions of taxpayers about any undue hardship being caused in genuine cases.

8. The current draft of the DTC 2010 also does not provide a commencement date for the GAAR. In our view, this could result in situations where certain transactions, which may have been entered into before the commencement of GAAR, but the effect of which spill into the post GAAR period, are also brought within the ambit of GAAR. These situations could get further complex or inequitable among taxpayers where some taxpayer may have obtained advance rulings or favourable appeal orders for the similarly structured transactions.

   To understand this better, let's take a situation where a particular taxpayer has issued convertible debentures to its existing shareholder and has obtained favourable rulings from the appellate authorities on the deductibility of interest paid on such debentures. In this situation, there is a possibility that under the current version of the GAAR, the CIT could seek to re-categorize the debentures issued by a closely held company as equity and seek to deny the interest deduction in the post GAAR period.

9. At the time when the global financial/ credit markets are squeezed and most foreign investors are significantly risk averse, the draft DTC 2010 could further accentuate the squeeze in FDI into India. This is likely to cause unnecessary anxiety amongst overseas investors including strategic, private equity, institutional investors due to various reasons including the following:

   - Uncertainty (unpredictability of what the Indian Revenue authorities may do).
   - Fear of being dragged into protracted and expensive litigation even if the position taken was one which was universally accepted at the time.
   - Lack of clarity on the positions that may be adopted by the Revenue authorities based on the facts of each case.

- Lack of comfort/ confidence as regards the reliability of the estimates/ projections based on which investment decisions are normally made. This could inhibit foreign investors including strategic investors as well as private equity investors from investing in India.

In view of the above, the damage caused to the Indian economy could far outweigh the benefits of the incremental tax collection from GAAR, if any.

Suggestion

The proposed provisions of the DTC have significantly reduced opportunities for taxpayers to engage in tax avoidance schemes since the DTC has done away with/phased out profit linked incentives, reduced the burden of tax, treated profits from business capital assets on par with business income, etc. Thus, as such, the need to introduce GAAR in the DTC stands diluted to a great extent and keeping in mind the various adverse implications described above, it is strongly suggested that the GAAR provisions should be significantly restructured or even deferred. .

Reduce the rigor of GAAR

If GAAR is still proposed to be introduced, the concern is that the GAAR, in its current form, is extremely wide and could be prone to misuse by the Revenue Authority. While economic and tax policy considerations for having a GAAR in the tax law can be appreciated, it is impossible to draft a tax legislation that covers every situation. With the complexities of modern business and financial arrangements and the inter-connectedness of provisions in the tax code, arrangements can be constructed that were never contemplated by the policy makers that achieve results that comply with the letter of the law, but which are at odds with policy intentions. A GAAR is intended to redress the balance between tax payers and tax administrators by attacking egregious examples of artificial tax manipulation. At the same time, it is expected that taxpayers will and should be allowed to arrange their affairs to minimize tax. Moreover uncertainty is reduced when tax payers can have confidence that they can use the statute as it is written. Therefore a GAAR should strike a balance between legitimate tax minimization and illegitimate tax avoidance. The objective should be to deter aggressive tax planning without introducing uncertainty in the ordinary affairs of taxpayers.

While the GAAR is intended to prevent abusive tax avoidance arrangements, at the same time it should not interfere with legitimate commercial transactions. Taxpayers undertaking genuine business transactions would constantly have to face the administrative burden and costs associated with GAAR scrutiny and this may hamper commerce in the country. Consequently, the GAAR should distinguish between legitimate tax planning and abusive tax avoidance and establish a reasonable balance between the protection of the tax base and the need for certainty for taxpayers in planning their affairs. Modifying some aspects of the GAAR would help in better establishing this balance, so as to make it objective, transparent, easy to administer, interpret and remove elements of uncertainty. The Government could therefore consider the following proposals for modifying the GAAR:

At a broad level, the GAAR contains the following design elements: (1) a definition or description of the target activity; (2) a power to annul the tax consequences that would otherwise occur; (3) a power to impose tax as if the taxpayer had undertaken some other transaction; and (4) burden of proof

Definition or description of the target activity

The Code provides the definition or description of the target activity for invoking GAAR in Section 124(15) by defining the term "impermissible avoidance arrangement". The definition may be re-drafted to include all of the following: (1) there must be a tax benefit resulting from a transaction; (2) the transaction must be an avoidance transaction in the that cannot be said to have been undertaken primarily for a *bona fide* business/ commercial purpose other than to obtain a tax benefit; and (3) there must be abusive tax avoidance in the sense that it cannot be reasonably concluded that allowing a tax benefit would be consistent with the object, spirit or purpose of the provision. The current language of the Code could generally trigger GAAR if (1) above along with (2) **or** (3) is satisfied. All the three elements outlined above should be included within the scope of the target activity for invoking GAAR.

The Government could consider replacing the definition of the term "impermissible avoidance arrangement" currently contained in the DTC with the following:

"Impermissible avoidance arrangement means a step in, or a part or whole of, an arrangement: (1) whose main purpose is to obtain a tax benefit; (2) which may reasonably be considered as not having a bona fide business purpose or lacking in commercial substance; and (3) which may reasonably be considered as resulting in misuse or abuse of the provisions of the DTC having regard to the provisions of the DTC read as a whole."

Further, the current condition of GAAR being triggered in cases where obtaining a tax benefit is a 'main purpose' even for a step in, or part of the arrangement is extremely subjective and would only invite unnecessary litigation. Therefore, the trigger for invoking GAAR should be restricted only in those cases, where a transaction has been carried out 'solely' or primarily for the purpose of obtaining a tax benefit and such transaction does not have any commercial purpose/ substance.

The Code defines the term "tax benefit" in Section 1243(25) to include even a deferral of tax. The Government could reconsider the inclusion of tax deferral as a tax benefit for purpose of GAAR, considering that a specific provision in the Controlled Foreign Company (CFC) rules have been incorporated to address tax deferral. The Government should to clarify that if a tax benefit has been derived by virtue of a tax treaty provision and such tax treaty already contains a specific provision to prevent abuse of the tax treaty, the GAAR should not be applied overriding the treaty anti-abuse provision.

The Code further defines terms such as "commercial substance" and "bona fide business purpose" in Sections 124(19) and 124(10), respectively. These terms should be defined in an exhaustive manner as the current definition could result in some degree of subjectivity and ambiguity in its application.

The revised discussion paper suggested that GAAR provisions would be invoked only in respect of an arrangement where tax avoidance is beyond a specified threshold limit. However, no mention of it finds place in DTC 2010 and it states that the provisions of GAAR shall be applicable subject to certain conditions apply in accordance and in the manner as may be prescribed. Since the full contours of the provisions are therefore not presently formulated; our views and suggestions may require some modification in/ revision in light of what is eventually sought to be prescribed in this regard. The Government could consider providing some "safe harbors" as to when an arrangement would be deemed to be for a *bona fide* business purpose or as having commercial substance, and accordingly in such cases, the provision will not apply. In other words, it is recommended that a *de minimis* provision be introduced in DTC 2010 itself to avoid further litigation on this aspect as to whether such threshold limit can be incorporated as part of the delegated legislation. This would help the Revenue Authority in focusing only on pursuing significant transactions and thus reduce the administrative burden on both the taxpayers as well as the Revenue Authority. Furthermore, considering the far fledged impact of GAAR provisions, the threshold can be provided at a reasonable limit of around INR 25 crores.

Power to annul the tax consequences

The Code vests the power to annul the tax consequences on the Commissioner of Income-tax (CIT). The process through which the GAAR is invoked is as important to its success as is the legal drafting of the GAAR. The process of applying GAAR should ensure that there is consistency in interpretation of the GAAR across the country and that taxpayers are not faced with spurious challenges. Further, the integrity of GAAR should not be diluted by its application to inappropriate circumstances. If inappropriate GAAR challenges are made, it adds to taxpayer uncertainty and increases conflict between the taxpayer and tax administrator. It could also undermine the effectiveness of the rule if it resulted in Court judgments that curtailed its applicability because the wrong cases were taken to trial.

An independent authority comprising of members who have judicial experience including businessmen and professionals of experience should be constituted for objectively reviewing and approving all cases proposed by a CIT for invoking GAAR. This would serve as an effective inbuilt check on the discretion/misuse by the Revenue Authority, as also help in maintaining the sanctity of the GAAR process. The reference may be for formal directions or for deciding, on prima facie basis, whether GAAR is at all attracted. This body, along the lines of the Authority for Advance Rulings (AAR), could comprise of a Chairman who is a retired Supreme Court judge. This seems to have been the trend even in countries such as Spain and China where the proceedings under GAAR are approved by either a Consultative Committee or by the State body responsible for the administration of taxes. Alternatively, the DRP may be constituted comprising of such independent judicial members or well known industry experts so appointed for the purpose.

In addition, the Government consider providing for a maximum period (say, 12 months from date of filing tax return) within which the CIT should seek to invoke GAAR.

Further, a framework could be put in place whereby taxpayers can obtain advance rulings on whether a proposed transaction falls within the ambit of the GAAR. Such advance rulings should be final and binding on the Revenue Authority. The UK Consultative Document on GAAR also proposes a ‘clearance system’ whereby a taxpayer could approach a specialist section of the UK Inland Revenue to obtain a clearance that GAAR is not attracted for a proposed transaction.

Moreover, the GAAR should be modified to provide that the CIT should not be permitted to invoke GAAR in cases where a taxpayer has obtained a ruling with respect to the said transaction from the AAR or under an Advance Pricing Arrangement. The publication of guidance on the application of the rule can also increase taxpayer certainty.

Power to impose tax as if taxpayer had undertaken some other transaction

This power is provided to the CIT in Section 123 of DTC 2010 to impose tax by disregarding, combining, re-characterizing steps or parts of the arrangement or (b) disregarding any accommodating party or deeming persons who are connected to be one and the same person or (c) re-characterizing or re-allocating income or (d) re-characterizing multi-party financing transaction or (e) re-characterizing debt financing as equity.

If the CIT imposes tax by applying any of the above, it should be mandatorily provided that relief by way a corresponding adjustment is provided to a counter party. The concern raised here is that the Revenue Authority could seek to re-categorize dividends in the hands of one taxpayer as interest, thereby increasing the tax payable by one taxpayer without granting a corresponding deduction to the entity paying the dividend. It should be ensured that the Revenue Authority evaluates transactions on a more holistic basis rather than 'picking and choosing' specific steps in a particular transaction and alleging impermissible tax avoidance. For evaluating whether a transaction involves impermissible tax avoidance, the Revenue Authority should view the entire transaction as a whole and the impact in the hands of all the parties to such transaction, should be duly considered. A transaction or part of a transaction should not be viewed in isolation nor should only the impact in the hands of one party be considered for evaluating impermissible tax avoidance.

For e.g. if the CIT re-allocates income from one taxpayer to another, the same income should not be taxed in the hands of the person from whom it is reallocated. Further, some of the above aspects such as the power to re-characterize debt as equity as best addressed by specific anti-avoidance provisions such as thin capitalization rules and the Government may consider eliminating them from the GAAR.

Burden of Proof

The onus to prove that a particular transaction is not in the nature of an 'impermissible tax avoidance transaction' has been cast on the taxpayer as per the Bill. This could result in the CIT seeking to invoke GAAR on mere suspicion in spite of the fact that there may not be evidence that the taxpayer has engaged in an impermissible avoidance transaction. The burden on the taxpayer in such circumstances is unmanageable. The GAAR should be modified to put at least the prima –facie burden of proving the existence of an impermissible tax avoidance engagement on the CIT prior to invoking the provisions of GAAR in any transaction. This position also finds support in the thinking of the UK HMRC2. Alternatively, the Government could consider the possibility of sharing the burden of proof between the taxpayer and the CIT. For e.g. the burden of establishing (3) i.e. establishing the tax benefit resulted in misuse or abuse of the DTC should be shifted on to the CIT.

'Grandfathering' provisions

As DTC 2010 would come into force from 1 April 2012, the GAAR could potentially apply to income arising after this date from existing arrangements of taxpayers which may have been in place for several years. Therefore taxpayers who would have put their existing arrangements in place with a *bona fide* belief that such arrangements were within the framework of tax law would be put to difficulty. Hence, suitable transitional/ grandfathering provisions should be incorporated in the GAAR which would avoid such difficulties to taxpayers.

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[2] "It seems logical to place the burden of proof on the Revenue to show that tax avoidance is a main purpose of a transaction, but to place it on the taxpayer to show that a transaction falls within "acceptable tax planning'. This follows the line suggested by Tax Law Review Committee (TLRC)."

Whilst we strongly believe that the current GAAR needs to be significantly amended, our overriding concern is that, despite the revised discussion paper's stated intention to the contrary, the proposed legislation is so wide in its scope and so far-reaching that it is going to affect ordinary, everyday business transactions, i.e. it will introduce uncertainty even into, what have hitherto been, "vanilla" transactions, because there is the possibility that the GAAR provisions could apply. We would also like to stress the need to ensure that in the quest to counteract so called impermissible tax avoidance transactions/ schemes, the legislation does also however, counteract permissible tax planning in mitigation of tax, which will adversely affect businesses in India.

Other

The proposal to codify GAAR in the tax legislation represents a new approach by the Indian Government in dealing with tax avoidance. While policy makers worldwide have extensively debated the advantages and disadvantages of GAAR, the most common argument against a statutory GAAR is that it promotes uncertainty for taxpayers. In framing the legislation that is sufficiently all-embracing to deter tax avoidance, there is always the danger of penalizing those who have genuine reasons for entering into a bona fide transaction. Furthermore, by including elements of 'anti-tax deferral' principles, GAAR recognizes deferral of tax as a tax advantage, although, to address tax deferral, it has also introduced CFC rules. Hence, it is recommended that the definition of "tax benefit" be appropriately amended to remove references to tax deferral, tax reduction in general and specifically with reference to a tax treaty. Also, the additional inclusion of "reduction in tax bases including increase in loss" should also be deleted as it would result in an absurd consequence of even a bonafide tax incentive deduction claimed under the provisions of the Code being considered as a "tax benefit". .