

PRE BUDGET MEMORANDUM 2018

Direct Taxes
and
International Tax



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

PRE-BUDGET MEMORANDUM - 2018

DIRECT TAXES AND INTERNATIONAL TAX



THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA

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- 1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum - 2018 on Direct Taxes and International tax to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2018-19.
- 1.2 The suggestions have been broadly categorized under the following heads:
- Part A** : Suggestions relating to the policy & provisions of Income-tax Act, 1961
- Part B** : Suggestions for improving Tax Administration and Citizen Services
- 1.3 The suggestions are given Chapter wise and are intended to serve the following purpose:
- I. Improve tax collection.
 - II. Reduce/minimize litigations
 - III. Rationalization of the provisions of direct tax laws.
 - IV. Removal of administrative and procedural difficulties relating to Direct Taxes



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PART A

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



CHAPTER I

PRELIMINARY



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion												
1.	Increase in the rate of surcharge increases cost of doing business for domestic companies	The Finance Act, 2015 increased the rate of surcharge levied on domestic companies by 2 per cent. The surcharge at the rate of 7 per cent shall be levied in case of a domestic company if the total income of the domestic company exceeds INR one crore but does not exceed INR ten crore and at the rate of 12 per cent in case total income exceeds INR ten crore. The comparative scenarios of tax rate for domestic companies (including surcharge and education cess) is as follows:- <table> <tr> <th>Particulars</th><th>Income upto INR 1 crore</th><th>Income above INR 1 crore but upto INR 10 crore</th><th>Income above INR 10 crore</th></tr> <tr> <td>Pre 2015 surcharge scenario</td><td>30.9 %</td><td>32.4 45%</td><td>33.9 9%</td></tr> <tr> <td>Post 2015 surcharge scenario</td><td>30.9 %</td><td>33.0 63%</td><td>34.6 08%</td></tr> </table>	Particulars	Income upto INR 1 crore	Income above INR 1 crore but upto INR 10 crore	Income above INR 10 crore	Pre 2015 surcharge scenario	30.9 %	32.4 45%	33.9 9%	Post 2015 surcharge scenario	30.9 %	33.0 63%	34.6 08%	<i>The increased rate of surcharge on tax and DDT makes cost of doing business in India significantly high. It is recommended that the levy of additional surcharge on tax rates should be removed (regardless of the ceiling of income) on domestic companies. Further the additional surcharge on DDT should also be removed.</i> <i>Since the government has already decided that it will be reducing corporate tax rates from 30 per cent to 25 per cent in a phased manner, without prejudice to the above suggestion, the tax rates should be made inclusive of all surcharge.</i>
Particulars	Income upto INR 1 crore	Income above INR 1 crore but upto INR 10 crore	Income above INR 10 crore												
Pre 2015 surcharge scenario	30.9 %	32.4 45%	33.9 9%												
Post 2015 surcharge scenario	30.9 %	33.0 63%	34.6 08%												



Sr. No	Section	Issue/Justification	Suggestion
		The Finance Act, 2015 has also increased the surcharge rate from 10 per cent to 12 per cent on DDT. The increase in surcharge by 2 per cent will bring the effective DDT rate to 20.358 per cent as against the present rate of 19.995 per cent. The increased rate of surcharge on tax makes cost of doing business in India significantly high. The increased tax cost will adversely impact the investors' sentiments and economic growth. Further, the effective tax rate applicable to domestic companies also happens to be one of the highest in the world with a very few countries¹ levying a higher tax rate (of 34.6%) for income levels of more than INR 10 crore. DDT is a levy on the company which was earlier levied in the hands of the shareholders. The increased DDT rate (inclusive of surcharge and education cess) creates disparity when compared with the tax rate of dividends received by an Indian company from specified foreign subsidiaries. In the past, the government has introduced additional surcharge for a limited period, for example the Finance Act, 2013 had increased the surcharge from 5	

¹ For the purposes of comparison, the tax rate in the case of the other BRICS nations is as follows:
Brazil – 34%; China – 25%; Russia – 20%; and South Africa – 28%.



Sr. No	Section	Issue/Justification	Suggestion
		per cent to 10 per cent on domestic companies whose taxable income exceeds 10 crore per year. Further in case of foreign companies, who pay the higher rate of corporate tax, the surcharge was increased from 2 per cent to 5 per cent. In case of dividend distribution tax or tax on distributed income, surcharge was increased from 5 per cent to 10 per cent. However, such additional surcharge were in force only for one year i.e. for Financial Year 2013-14.	
2.	Section 2(15) – Need for defining “Yoga”	The definition of “charitable purpose” under section 2(15) has been amended to include ‘Yoga’ as a specific category thereunder. However, ‘yoga’ is not defined in section 2(15). Generally, the term ‘yoga’ is used in a wide sense to encompass different forms of meditation and physical, mental and spiritual practices. In the absence of specific definition, the scope and ambit of what constitutes yoga would be a subject matter of litigation, especially in the context of claiming exemption under section 11.	<i>It is suggested that the term ‘yoga’ be defined in order to confine its scope and prevent abuse of the provision by institutions engaged in other activities of similar nature not constituting yoga.</i>
3.	Section 2(15) – Substitution of existing provisos with new proviso requiring satisfaction of	The proviso to Section 2(15) provides that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of	<i>It is suggested that:</i> <i>The proviso also includes a monetary limit, say Rs 25 lakhs, in line with the erstwhile second proviso so that charitable trusts with lower</i>



Sr. No	Section	Issue/Justification	Suggestion
	two new conditions for qualifying as a "charitable purpose"	rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,- - such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and - the aggregate receipts from such activity or activities, during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year. Probable hardship a) The erstwhile section 2(15) provided for a monetary limit of Rs. 25 lakhs upto which the receipts as may be derived from the activities in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business may still be regarded as charitable purpose, in case of a trust whose object is advancement of any other object of general public utility. The amendment by the Finance Act, 2015 has	turnover continue to get the benefit available to charitable trusts under the current law. The same may be given effect to by amending the condition given in (ii) as below: <u>"(ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed twenty percent. of the total receipts, of the trust or institution undertaking such activity or activities, or twenty-five lakh rupees, whichever is higher, for the previous year."</u> (a) Since section 11(4A) already contains a similar condition for grant of exemption, the condition specified in clause (i) of the proviso to section 2(15) may be removed. Further, appropriate guidelines/clarification may be issued in respect of clause (i) of the proviso to section 2(15) to enable trusts to comply with the condition requiring such activity to be undertaken in the course of actual carrying out of advancement of any other object of general public utility for claim of exemption.



Sr. No	Section	Issue/Justification	Suggestion
		replaced this monetary limit with a percentage of total receipts. Unintentionally, it may adversely impact small charitable trusts and benefit charitable trusts having a higher turnover. For example, a charitable trust having annual receipts of Rs.100 crores would be able to retain its charitable status if its business receipts are Rs.20 crores or less, whereas a charitable trust having total receipts of Rs.10 lakhs may lose its charitable status even if it has Rs.2.50 lakhs as receipts from activity in the nature of trade, commerce or business. The amended proviso may, therefore, result in unintended hardship to small charitable trusts engaged in genuine charitable activities. b) Further, there appears to be an element of subjectivity in the first condition in the proposed proviso requiring such activity to be undertaken in the course of actual carrying out of such advancement of any other object of general public utility, which may give rise to unnecessary litigation. Therefore appropriate guidelines/clarification may be issued by way of a	



Sr. No	Section	Issue/Justification	Suggestion
		circular or otherwise to ensure clarity as to when an activity is not considered as being undertaken in the course of actual carrying out of such advancement of any other object of general public utility. This would provide the necessary guidance to the charitable trusts to ensure compliance with the said condition and also enable the Assessing Officers to examine judiciously whether the said condition has been satisfied for grant of exemption. In this context, it may also be noted that there is already a requirement in section 11(4A) that the business should be incidental to the attainment of the objects of the trust or institution and separate books of account should be maintained by such trust or institution in respect of such business. Therefore, there is no need for a similar condition in section 2(15).	
4.	Mandatory application of income by charitable trusts/ institutions under section 10(23C)	Application of income is mandatory by charitable trusts/institutions including those enjoying benefits under section 10(23C) to its objects, subject to accumulation of not more than 15% of its income including income from voluntary contributions. Similar provisions under section 11(1) read with section 12(1) exclude 'corpus donations' (voluntary	<i>Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts / institutions.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



Sr. No	Section	Issue/Justification	Suggestion
		contributions made with a specific direction that they shall form part of the corpus of the trust or institution) from the mandatory requirement of application of the income. No such provision has been made in section 10(23C). This will compel the Institutions coming within the scope of section 10(23C) to apply even their corpus donations to the day-to-day activities for getting the exemption. This will be prejudicial to them because they cannot build up the corpus fund.	
5.	Clarification regarding exemption of interest on deposits by co-operative societies with multi-State co-operative banks	It is seen that that when a co-operative society places deposits in a co-operative bank the Assessing Officers are denying the benefit of Section 80P on the interest earned on such deposits. The denial is based on the erroneous application of a judgement that has held that a co-operative bank is not entitled to the benefit of Section 80P. This may be set right by a clarificatory amendment. Further, the intent of legislation is clearly to allow the deduction to any co-operative society which earns interest from deposits with a co-operative bank. However, the definition of co-operative Society as given in section 2(19) of the Act refers to Co-operative Society registered under the Co-operative Societies Act 1912 and societies registered under the State Co-operative Societies Act.	<i>The anomalous position may be rectified by making suitable amendment in section 2(19) defining a Co-operative Society, by including therein a society registered under the Central Act currently applicable.</i>



Sr. No	Section	Issue/Justification	Suggestion
		Since this definition does not refer to Societies registered under the Central Act, under which numerous Multi-state Co-operative Banks are registered, the interest earned by a co-operative society from a deposit with a Multi-state Co-operative Bank is therefore technically not eligible for deduction of the interest earned on such deposit. This leads to an anomalous situation 'that a cooperative society keeping a bank deposit with a State level Co-operative Bank gets such interest as non-taxable but if the same co-operative society keeps the deposit with a Multi-state Co-op Bank, then such interest is taxed. It is submitted that this is not the intent of the legislation.	
6.	Section 2(42A) – Reduction in holding period in case of immovable property, being land or building or both, to qualify as long term capital asset – Consequential amendments to be made in sections 54, 54B, 54D and 54F	The Finance Act, 2017 amended section 2(42A) so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long term capital asset. The same is done to promote the real estate sector and to make it more attractive for investment. Issues (1) Consequential amendments for reducing the holding period of immovable property from 3 to 2 years is required to be made in sections 54, 54B, 54D and 54F	It is suggested that: (1) Consequential amendments may be made in sections 54, 54B, 54D & 54F so as to enable the holding period of the new asset purchased to be



Sr. No	Section	Issue/Justification	Suggestion
		in line with the amendment in section 2(42A). At present, these sections restrict transfer of new assets purchased for 3 years. (2) In order to avoid litigation, clarification is required on whether leasehold rights and tenancy rights would be considered to fall within the meaning of "land and building" to avail the benefit of reduced holding period for being treated as a long-term capital asset. (3) Ambiguity may also arise with respect to flats in a co-operative society i.e. whether shares in a co-operative society qualify within the meaning of immovable property being land or building or both to become eligible for lower holding period of two years.	<i>reduced to 2 years from 3 years in case of land and/or building.</i> (2) <i>Circular may be issued/Explanation may be inserted to clarify that leasehold rights and tenancy rights are also to be treated as falling within the meaning of "land and building" for the purpose of availing the benefit of reduced holding period for being treated as a long-term capital asset.</i> (3) <i>In order to avoid any interpretation issue, it may be clarified that flats in a co-operative society are also covered within the meaning of immovable property being land or building and are hence, eligible for lower holding period of two years for computation of capital gains.</i>
7.	Section 2(42A), section 47(xb) and section 49(2AE) - Tax neutral conversion of preference shares to equity shares – Clarification	The Finance Act 2017 amended Section 47 of the Act, by virtue of which conversion of preference share of a company into equity share of that company will not be regarded as transfer. The amendment is made by insertion of sub-section (xb) in section 47. Consequent amendments were also made in section 2(42A) of	<i>It is suggested that</i> a) <i>Since this amendment has clarified the real legislative intent, a clarification may be given by way of Explanation in section 47 or by way of an Explanatory Circular that the aforesaid provisions would be applicable in respect of earlier years as well.</i>



Sr. No	Section	Issue/Justification	Suggestion
	regarding tax treatment for earlier years	the Act by insertion of sub-clause (hg) in clause (i) of Explanation 1 to section 2(42A) for determining the period of holding of such equity shares, by including the period of holding of the preference shares as well. Further, sub-section (2AE) is inserted in section 49 to compute the cost of acquisition of the converted equity shares. As per the amendment, the cost of such equity shares shall be deemed to be the cost of acquisition of preference shares. Currently, conversion of bond or debenture of a company into shares of that company is not regarded as transfer. However, no similar tax exemption was available so far in case of conversion of preference shares of a company into its equity shares.	<i>b) Also, conversion of warrants into equity shares may be covered under section 47.</i>
8.	Section 3- Definition of Previous year	In Income-tax Act, 1961 is "Assessment Year" defined in Section 2(9) as: "Assessment Year" means the period of twelve months commencing on the 1st day of April every year. "Previous Year" is defined in Section 3 of the Income-tax Act, 1961 to mean "for the purpose of this Act, "previous year" means the financial year immediately preceeding the assessment year. There is no difference in the period of Assessment Year & Previous Year since both are financial year/Income Year for accounting purpose.	<i>In line with the provision of section 320(92) read with section 2 of the Direct Taxes Code, 2013 the concept of "previous year" and "assessment year" may be replaced with the "financial year" to mean as below:</i> <i>"financial year" as per Direct Taxes Code, 2013 means—</i> <i>(a) the period beginning with the date of setting up of a business and ending with the closure of the business or the 31st day of March following the date of setting up of such business, whichever is earlier;</i>



Sr. No	Section	Issue/Justification	Suggestion
		A normal income tax assessee does not understand the difference of wordings of Assessment Year (AY) & Previous Year/ Accounting Year (AY) and gets confused in presenting his details, while paying Advance Income tax, TDS or filing the return of income Tax. Everybody considers Assessment Year (AY), previous year (PY) and Accounting Year (AY) as same. To avoid misunderstanding or confusion among Income Tax payers (Assessees) and for keeping the records, the concept of “previous year” and “assessment year” may be replaced with the “financial year” of “previous year”. Even though, the said suggestion has been considered while framing the Direct Taxes Code, to simplify the law, it would be appropriate to bring the change in the Income-tax Act itself.	(b) <i>the period beginning with the date on which a source of income newly comes into existence and ending with the closure of the business or the 31st day of March following the date on which such new source comes into existence, whichever is earlier;</i> (c) <i>the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be; or</i> (d) <i>the period of twelve months commencing from the 1st day of April of the relevant year in any other case;</i>
9.	Place of Effective Management provisions – section 6(3)	POEM Guidelines have been recently finalised only on 24th January, 2017, whereas the POEM provisions are already applicable w.e.f. 1st April 2016 (applicable from AY 2017-18 and onwards) The Finance Act 2016, while deferring POEM by one year to be effective from AY 2017-18 onwards, also introduced section 115JH which gives power to CBDT to notify a transitory regime setting out the manner in	<i>In light of the above, it is suggested that applicability of POEM should be deferred by a year (i.e. from A.Y. 2018-19 onwards).</i>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		which the provisions of Income Tax Act shall apply to companies whose POEM is held, for the first time, to be located in India as also to companies whose POEM is held to be in India during the course of assessment proceedings. CBDT is yet to notify this transitory regime. The taxpayers must be given some time to arrange their affairs to comply with POEM Guidelines and also have clarity on transitory regime.	



CHAPTER II

BASIS OF CHARGE



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
10.	Provisions regarding indirect transfer of capital asset situated in India Section 9	The Finance Act, 2015 has amended provisions dealing with indirect transfer of capital asset situated in India. The amendment provides clarity on certain contentious aspects with regards to taxation of income arising or accruing from such indirect transfers. The following amendments have been introduced in the Act. - Share or interest in a foreign company or entity shall be deemed to derive its value substantially from Indian assets only if the value of Indian assets (whether tangible or intangible) as on the specified date exceeds the amount of INR 10 crores and represents at least 50 per cent of the value of all the assets owned by the foreign company or entity. - The value of an asset shall be its Fair Market Value (FMV). Subsequently, the CBDT notified the Rules prescribing the manner of computation of FMV of assets of the foreign company or entity and the reporting requirements by the Indian concern. - The date of valuation of assets (without reducing the liabilities) shall be as at the end of the accounting	<i>Since the objective of the amendment is to tax indirect transfer through shell companies, a listed company should not be considered as a shell or conduit company. The same was also suggested by the Shome Committee. It is recommended that exemption should be provided in respect of transfer of shares in a foreign company (listed on a stock exchange outside India) having substantial assets located in India.</i> <i>Intra-group transfers as part of group re-organisations (other than amalgamation and demerger) should also be exempt from the indirect transfer provisions.</i> <i>While Explanation 5 to Section 9(1)(i) of the Act provides that shares of a foreign company which derives directly or indirectly its substantial value from the assets located in India shall be deemed to be situated in India.</i>



		period preceding the date of transfer. However, in case the valuation of assets as on the date of transfer exceeds by at least 15 per cent of book value of the assets as on the date on which the accounting period of the company/entity ends preceding the date of transfer, then the specified date shall be the date of transfer. - Exemption from applicability of the aforesaid provision has been provided in the following situations - Where the transferor along with its related parties does not hold (i) the right of control or management; (ii) the voting power or share capital or interest exceeding 5 per cent of the total voting power or total share capital in the foreign company or total interest in the entity directly holding the Indian assets (Holding Co). - In case where the Indian assets are not directly held, then if the transferor along with related parties does not hold (i) the right of management or control in relation to such foreign company or the entity; and (ii) any	Section 47(vicc) of the Act provides exemption only if the shares of foreign company derive substantial value from shares of an Indian company. While the intent may be to exempt all cases of demerger where foreign company derives substantial value from assets located in India, the reading of Section 47(vicc) of the Act indicates that the said exemption would be available only in cases where the shares of the foreign company derive substantial value from shares of Indian company. Due to this inconsistency in the language of Section 47(vicc) vis-à-vis Explanation 5 to Section 9(1)(i), transfer of shares of a foreign company which derives its value predominantly from assets located in India (other than shares of an Indian company) under a scheme of demerger may be deprived of the aforesaid exemption. It is recommended that Section 47(vicc) of the Act should be amended to provide that “any transfer in a



		rights in such foreign company which would entitle it to either exercise control or management of the holding company or entitle it to voting power exceeding 5 per cent in the holding company. - The Finance Act, 2015 has introduced Section 47(vicc) in the Act which, subject to fulfillment of certain conditions provides that transfer of shares of a foreign company (which directly or indirectly derives its value substantially from shares of an Indian company) by the demerged foreign company to the resulting foreign company under a scheme of demerger will not be regarded as transfer. - The Indian entity will be required to furnish information relating to indirect transfers. The same has also been notified. In case of any failure, the Indian company will be liable for a penalty of INR 5 lakhs or 2 per cent of the value of the transaction as specified.	<i>demerger, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly, its value substantially from the assets located in India, held by the demerged foreign company to the resulting foreign company, if,—</i> <i>.....”</i> <i>It is suggested that a similar amendment should also be made under Section 47(viab) of the Act (in case of amalgamation).</i> <i>of Section 234A, 234B, 234C and 201(1A) of the Act should not be applied in cases where a demand is raised on a taxpayer on account of retrospective amendment relating to indirect transfer. An appropriate amendment should be made in the respective provisions of the Act.</i>
11.	<i>Section 9(1)(i)-Benefit of non-applicability of indirect transfer provisions in case of Category I and II FPIs - Provisions for</i>	The Finance Act, 2012 amended Section 9(1)(i) of the Act with retrospective effect from 1st April 1962 to provide that any share or interest in an entity incorporated outside India shall be deemed to be situated in India if such share or interest derives, directly or indirectly, its value substantially	<i>It is suggested that:</i> <i>While issuance of Circular no. 28/2017 is a welcome clarification for non-residents in respect of redemption or buy-back of shares held indirectly through specified funds (FPIs</i>



	avoidance of double taxation in case of such indirect transfer provisions, where direct transfer has already been subject to tax	from assets located in India. The Finance Act, 2017 provided that the aforesaid deeming provisions shall not apply to an asset or capital asset mentioned in Explanation 5 of section 9(1)(i), which is held by a non-resident by way of investment, directly or indirectly, in a Foreign Institutional Investor as referred to in clause (a) of the Explanation to section 115AD and registered as Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992. The Finance Act, 2017 exempted investors (direct / indirect) in category I (sovereign funds) and category II (broad-based funds) FPIs from the application of indirect transfer tax provisions. The CBDT has, recently, issued a Circular No. 28/2017 dated 7 November 2017 clarifying that the indirect transfer provisions shall not apply to income arising to a non-resident on redemption or buy-back of shares held indirectly through specified funds, if such income is consequent to transfer of shares held in India by the specified funds and such direct transfer is	registered as Category -I or Category -II), in respect of other offshore funds the indirect transfer provisions may still lead to double taxation Therefore, a suitable amendment should be brought in to the effect that exemption is extended to all offshore funds (interalia Category-III FPIs) and should not be restricted to specified funds.



		taxable in India. The Circular applies to specified funds (VCF, Category I or II – AIF) and not to offshore funds in general. Further, the exemption will be restricted to pro-rata share (of the non-resident) in the total consideration realized by the specified funds from the said transfer of shares or securities in India.	
12.	Scope of Royalty Income -Section 9(1)(vi) of Income-tax Act, 1961	(a) Right to use a copyright vis-à-vis Right to use a copyrighted article Internationally, as evidenced by OECD Commentary and opinion of eminent experts, the following two basic principles with regard to software payments are recognized and well settled: (i) The proposition that “right to use a copyright” is different from “right to use a copyrighted article” is recognized and it is only the ‘right to use a copyright’ which is covered within the definition of royalty. (ii) The distributor of computer software does not pay to exploit any rights in the software but only for acquisition of the software for further circulation. In view of these, payments made by a distributor to the copyright holder are in the nature of business income and not royalty income. Also, ‘Packaged /Canned Software’ means ready-made software that could be sold off the shelf. Sale of such software	<i>It is suggested that payments for copyrighted article like shrink-wrapped software as also payments made by distributors of software be specifically excluded from the definition of “royalty”.</i>



		products represent sale of copyrighted articles as against a copyright i.e. such transactions represent sale of goods. Packaged software has been held to be 'Goods' even by the Supreme Court in case of <i>TCS vs. State of AP (271 ITR 401)</i>. The Central Board of Excise and Customs ("CBEC") has recognized 'Information Technology Software' as 'Goods' and classified the same as Central Excise Tariff Item 8523 80 20 in Schedule I to the Central Excise Tariff Act, 1985. Further, 'Packaged Software/Canned Software' is recognized as 'Goods' for the purposes of Central Excise Law by the CBEC, which is another wing of the Ministry of Finance. These facts lead to the conclusion that 'Packaged Software /Canned Software' are in the nature of 'Goods' and the legislation also recognizes the same. Given the above, it is recommended that a specific amendment be made to the Income-tax Act to exclude 'Packaged/Canned Software' from the purview of 'royalty' defined under Section 9(1)(vi). Further, in certain cases, these software products are downloadable from the internet and not necessarily delivered in tangible media such as a CD or a DVD. However, irrespective of the mode of delivery, the fact remains that what is sold is a	



		'copyrighted article' and not a 'copyright'.	
		(b) Use of Standard facilities The Apex Court in CIT Vs. Kotak Securities Limited has clarified that the common services which are necessary for carrying out trading in securities for which transaction charges are paid, do not amount to technical services.	<i>In view of decision of Apex Court in CIT Vs. Kotak Securities Limited an exception should be carved out in Explanation 6 to Section 9(1)(vi) so as to exclude payments for use of standard facilities to the general public at large like payments for telephone service, internet service, cable television services and other similar services.</i>
		c) Exclusion of packaged software from applicability of TDS under Section 194J of the Income-tax Act Circular No. 13/2006, dated 13.12.2006 issued by the CBDT states that TDS shall be applicable only when there is a 'contract for work' and not where there is a 'contract for sale'. This proposition has also been upheld in various judicial precedents like BDA Limited vs. ITO (TDS) 281 ITR 99 (HC Bom), CIT vs. Dabur India Limited (283 ITR 197) (HC Del). Considering the facts and arguments above, it is clear that transaction of sale of 'Packaged/Canned Software' is a 'contract for sale' as against a "contract for work" and consequently, should not attract TDS provisions. It is	<i>To bring utmost clarity, it is also suggested that a specific amendment be made to Section 194J to exclude sale of software products from the ambit of tax withholding. In this regard, it is suggested that the following provision be included in Section 194J of the Act:</i> <u>Amendment required</u> "194J. (1) Any person, ... <i>Provided that no deduction shall be made under this section—</i> 1. ... 2. ... <i>from any sums, if credited or paid for the transfer of a computer software (including the granting of a</i>



		relevant to note that 'Packaged/Canned Software' is also subject to excise duty. There are no other goods in India which are subject to both excise duty and TDS. An amendment to the Income-tax Act to exclude 'Packaged/Canned Software' from the purview of 'royalty' would automatically exclude the transactions from the purview of Section 194J of the Income-tax Act and would help resolve the withholding tax issue faced by traders of hardware with embossed software. The distribution network and channel partners for off the shelf packaged software also deal with hardware like computers, desktop etc. The packaged software is mostly sold along with the hardware, on the same invoice. There is no obligation of TDS on any hardware items, and the traders are finding it confusing and difficult to discharge the TDS obligation arising out of the sale of the 'Packaged Software/Canned Software'. Resolution of the definition of royalty to exclude 'Packaged Software/Canned Software' would also help traders and boost ease of business. Separately, Software Ancillary Services such as Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant	<i>licence), along with or without a computer or computer-based equipment or for ancillary services such as up gradation or subscriptions, which does not involve transfer of all or any rights in respect of any copyright."</i>



		of license but involve only payments of consideration for services is not 'Royalty' for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the Income-tax Act. Clarification may be issued that AMC's, Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license, but involve only payments of consideration for services is not "Royalty" for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the Income-tax Act and that such transaction are not liable for TDS under Section 194J of the Act.	
13.	Explanation 5 to Section 9(1)(vi) – e commerce services	Explanation 5 to Section 9(1)(vi) has been introduced by Finance Act, 2012 w.e.f. 1st June 1976 to clarify that royalty includes and has always included consideration in respect of any right, property or information, whether or not the right, property or information is used directly by the payer or is located in India or is in the control or possession of the payer. It appears that this amendment may also cover within its domain payment for telecom services (including basic / mobile telephony, internet charges, roaming charges, interconnect charges, etc.); e-commerce transactions like access of data bases, cloud computing; etc. which may not be the real intention. Even internationally, a large variety of above referred transactions are not covered within the ambit of "royalty".	<i>In view of the reasoning given, it is suggested that the Government should clarify by way of insertion of a proviso or issue of a Circular that Explanation 5 as mentioned would not be applicable to any payments for telecom services; e-commerce transactions; etc.</i>



14.	Explanation 6 to Section 9(1)(vi) – telecom services	Expansion of definition [Explanation 6 to section 9(1)(vi)] of 'process' so as to include transmission by satellite, cable, optic fiber or by any other similar technology within definition of "Royalty" should be dropped as it is negatively impacting telecom sector and leading to: (i) Non viability for Indian entrepreneurs to run such capital intensive projects due to rise in cost, as the overseas service providers (of roaming, bandwidth, etc.) would seek to shift their tax burden (TDS and Income-tax) to Indian players. (ii) Increase in cost of basic amenities (like telephone, internet, electricity, cable charges etc.) to the general public at large and adding on to inflation.	<i>In a bid to fuel the highly competitive and unnerved Telecom Industry as well as to bring in certainty, the government should clarify by way of insertion of a proviso or issue of a circular that Explanation 6 would not be applicable to any payments for telecom services including basic / mobile telephony, internet charges, roaming charges, interconnect charges, etc.</i>
15.	Carry forward of excess foreign tax credit	The Income-tax Act, 1961 allows for set off in respect of foreign taxes paid on overseas income. However, in case of loss/inadequate profits, no set off may be possible. In the current economic scenario of the global economy, business outlook has become extremely uncertain and results have become very volatile.	<i>It is suggested that assesseees be permitted to carry forward (say for five years) such unutilized credit (in USA such relief is granted vide section 904(c) of Federal Tax Act) for adjustment in future years. (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



Chapter III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
16.	Definition of "Keyman Insurance Policy" - Section 10(10D)	Any sum received under a Keyman insurance policy is not exempt under section 10(10D). The meaning of "Keyman Insurance Policy" given in Explanation 1 to section 10(10D) was amended by Finance Act, 2013 to include such policy which has been assigned to a person at any time during the term of the policy, with or without consideration". This amendment is effective w.e.f. 1.4.2014 (i.e. A.Y.2014-15). The effect of this amendment is to deny the benefit of exemption in respect of maturity proceeds of keyman insurance policy which has been assigned to a person during the term of the policy, whether with or without consideration, by including the assigned policy within the definition of "Keyman insurance policy". The issues under consideration and suggestions thereof in this regard are as follows – The entire proceeds would be subject to tax under section 17(3)(ii) in the hands of the person to whom the policy is assigned, whereas only the premium paid by the employer on which deduction has been claimed less the surrender value paid by the employee to the employer at the time of assignment should be subject to tax, since the same represents the actual benefit availed by the assignee.	<i>It is suggested that section 17(3)(ii) may be appropriately amended to provide that tax would be levied only to the extent of such difference, or in the alternative, deduction for surrender value may be provided for under section 16. In such a case, the employer can deduct tax at source on the differential amount treated as "profit in lieu of salary" at the time of assignment.</i> <i>Further, in any case, the maturity proceeds received on death of the assignee should be kept out of the tax net. This benefit is similar to the exemption given in respect of life insurance policies, where the annual premium paid exceeds 10% of minimum sum assured.</i>



Sr. No	Section	Issue/Justification	Suggestion
17.	Section 10(13)- Payment from approved superannuation fund	Section 10(10AA) provides for exemption for payment received as cash equivalent of leave salary in respect of earned leave period at the time of retirement whether superannuation or otherwise. Section 10(13) provides for exemption with regard to payment from an approved superannuation fund. Section 10(13)(ii) of the Act provides for exemption in the hands of the employee in respect of the amount received on commutation of the annuity in case of retirement at or after a specified age or becoming incapacitated prior to such retirement. This provision however, does not cover commutation of an annuity paid on voluntary retirement of the employee. Section 10(10AA), as mentioned above, has taken care of such case by using the terminology "or otherwise". Since the intention of the law makers is clear by the wordings of section 10(10AA), section 10(13)(ii) may be appropriately amended to include the words "or otherwise". This will provide relief to genuine taxpayers who are taking voluntary retirement.	Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of voluntary retirement, by including the words "or otherwise" in line with section 10(10AA) of the Income tax Act, 1961. (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
18.	Annual receipts under section 10(23C)	Under section 10(23C)(iiia) and (iiib) of Income-tax Act, it is provided that the income of University/Educational institutions/hospitals/ other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also, it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Though annual	It is suggested that "Annual Receipts" be clearly defined as income of the hospitals/ educational institutions arising regularly/every year but excluding value of donation received in kind by way movable assets, land, hospitals/educational equipment, sale



Sr. No	Section	Issue/Justification	Suggestion
		receipts have been prescribed as Rs.1 crore vide Rule 2BC of Income-tax Rules, the word “annual receipts” have not been defined in the Income-tax Act. It is not clear as to whether: (a) for computing “annual receipts” only the receipts of such institutions from educational/hospital activities alone are to be considered each year; (b) Certain receipts of such institutions that are not received on annual basis e.g. receipts from sale of property, equity shares and other proceeds on divestment are to be excluded from the computation of “annual receipts”; (c) In certain cases where such charitable institutions receive donations in kind in the form of land, movable assets etc. whether “annual receipts” would exclude such receipts since they are not received annually.	consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc. Further, it may be specifically provided that donations received towards corpus by way of land, movable assets are excluded from computation of “Annual Receipts” as prescribed under Rule 2BC of Income-tax Rules. (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
19.	Rationalisation of Provisions of Section 10(23C)	The 15th Proviso to Section 10(23C) states that application for obtaining approval under this section shall be made on or before 30th September of the relevant assessment year from which the exemption is sought. For example, if an institution seeks approval for Financial year 2017-18, it will have to apply up to 30th September 2018. Further, the 9th proviso to Section 10(23C) states that order granting approval or rejection shall be passed within 12 months from the end of month	It is suggested that: Such application should be allowed to be made at any time during the financial year for which exemption is sought even if the annual receipts have not exceeded or is not expected to exceed the limit of Rs 1 crore. Time limit for granting



Sr. No	Section	Issue/Justification	Suggestion
		in which such application was received. In view of this proviso, in respect of applications received on 30th September 2018, the order has to be passed on or before 30th September, 2019. So the status of the application is not known till next 12 months i.e. for 2 financial years. If such institution is not granted approval as on 30th September 2019 then it will have to pay income tax for Financial year 2017-18 and 2018-19. Resultantly, the charitable institution will have to face heavy tax burden. At the same time it is to be noted that ITD doesn't accept such application before close of financial year i.e. application for F.Y. 2017-18 cannot be made on or before 31st March 2018, though there is no such restriction under the Act.	approval may be reduced from 12 months to "within 4 months from the end of the month in which application has been filed", so that any institution should be well aware of its status before due date of filing its income tax return.
20.	Income-tax exemption for securitization trusts, levy of distribution tax on income distributed by such trusts under section 10(23DA)	The securitization trust has so far been treated as a pass through vehicle for tax purposes i.e. all the income of the securitization trust has been offered to tax by its investors (unless the investor is tax exempt viz., a mutual fund). This is consistent with the tax rules that apply to trusts under the tax law which prescribes a single level tax on a trust's income (i.e. tax is levied either on the trustee or on the beneficiaries). The interest income arising to such trusts from securitized debts is taxed directly in the hands of the contributories. The tax implications may be summarized as follows:- ➤ If contributory is a Mutual Fund, it will be entitled to exemption under section 10(23D). ➤ Any other contributory can claim	Instead of distribution tax model, a complete pass through model identical to pre 1st June 2013 regime be made applicable to Venture Capital Funds/Venture Capital Companies under section 10(23FB) read with section 115U, since the participation in PTCs is largely restricted to well-regulated financial institutions. (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)



Sr. No	Section	Issue/Justification	Suggestion
		deduction for corresponding expenses against such income (eg. interest and overheads) ➤ Contributories can claim credit of TDS, if any, made by the borrower However, due to disputes regarding the person on whom tax incidence lies, tax demands were raised on the securitization trusts rather than the investors, by treating such trusts as AOPs. In order to set at rest such controversies, the Finance Act 2013 : ➤ Exempted the securitization trust from tax on income earned. ➤ Imposed a distribution tax on income distributions by the securitization trust @ 25% in case of distributions to individuals and HUFs and @ 30% in other cases. ➤ Distribution tax will not be payable on income distributed by the securitization trust to a person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act (viz. mutual funds). ➤ Exempted the investors in the securitization trust from taxation on income distributions received. The above mentioned provisions have, however, created certain problems or securitized structures in vogue on account of the following reasons: (a) The exemption to the investors in the securitization trust means that investors (other than exempt investors such as mutual funds) in pass through certificates (PTCs) will now earn exempt income	



Sr. No	Section	Issue/Justification	Suggestion																
		instead of taxable income as was the case hitherto. This implies that the investors would not be able to set-off expenditure/ losses against income earned from PTCs in view of provisions of section 14A which prohibits deduction of any expenditure incurred in relation to exempt income. This may result in the entire transaction becoming unviable for investors, which is illustrated below. If the investor is a bank investing Rs.100 crores in a Securitized debt yielding interest @ 10% p.a. Assuming, that the bank's own cost of borrowing is say 8% p.a., its tax liability on interest income from securitized debt pre and post amendment and profit after tax is as follows :- <table> <tr> <th>Particulars</th><th></th><th>Pre amend ment</th><th>Post amend ment</th></tr> <tr> <td>Interest income @ 10% on Rs. 100 Cr distributed by Securitised Trust</td><td>(A)</td><td>10.00 Cr</td><td>10.00 Cr</td></tr> <tr> <td>Less: Distribution tax paid by the trust@30% on gross income</td><td></td><td>N.A.</td><td>3.00 cr</td></tr> <tr> <td>Net income distributed</td><td></td><td>10.00 Cr</td><td>7.00 Cr</td></tr> </table>	Particulars		Pre amend ment	Post amend ment	Interest income @ 10% on Rs. 100 Cr distributed by Securitised Trust	(A)	10.00 Cr	10.00 Cr	Less: Distribution tax paid by the trust@30% on gross income		N.A.	3.00 cr	Net income distributed		10.00 Cr	7.00 Cr	
Particulars		Pre amend ment	Post amend ment																
Interest income @ 10% on Rs. 100 Cr distributed by Securitised Trust	(A)	10.00 Cr	10.00 Cr																
Less: Distribution tax paid by the trust@30% on gross income		N.A.	3.00 cr																
Net income distributed		10.00 Cr	7.00 Cr																



Sr. No	Section	Issue/Justification				Suggestion
		Less :- Interest expenditure @ 8% on Rs. 100 Cr	(B)	8.00 Cr	8.00 Cr	
		Net income	C= (A-B)	2.00 Cr	(1.00) Cr	
		<u>Tax payable</u>				
		By Investor @ 30% ² on net income	(D)	0.60 Cr ³	-	
		Profit/(Loss) after tax	(C-D)	1.40 Cr	(1.00) Cr <i>Not allowed to be set-off on account of section 14A.</i>	
		The above illustration highlights that a structure which was commercially viable prior to amendment made by Finance Act, 2013 has the effect of becoming unviable solely due to change in the basis of incidence of taxation. It may be noted that the financial sector works on spread between yield from				

² Surcharge and cess ignored for the sake of simplicity

³ 30% of Rs. 2.00 Cr



Sr. No	Section	Issue/Justification	Suggestion
		investments and own cost of borrowing. Levy of distribution tax severely impacts the spread and make securitization structures commercially unviable defeating the object of SEBI and RBI guidelines for orderly development of securitization market. (a) The trading of PTCs (most PTCs are tradable instruments) also creates dual points of taxation (i.e. at the time of distribution of income by the securitization trusts and at the time of realization of gain when the PTC itself is sold for a profit) which seems to be unintended. (b) Ambiguity also arises for the borrower while evaluating withholding obligation at the time of payment of interest. Since the securitization trust is assessable as a separate tax entity and not a mutual fund or bank exempt from withholding, the borrower will be required to withhold tax unless the trust provides NIL withholding certificates. The securitization trust will be required to file return to claim refund of such TDS. The securitization trust should be able to set off TDS credit against distribution tax payable by it. There is no grandfathering provided for existing securitized trusts. Hence, any income distributed by existing securitized trusts on or after 1 June 2013 will also be subject to the new tax regime.	
21.	Section 10(23FB) Tax exemption	Earlier under Section 10(23FB) of Income-tax Act, any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) set up to raise funds for investment was exempt	<i>It is suggested that section 10(23FB) be reworded as follows:</i> <i>“Any income of a</i>



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



Sr. No	Section	Issue/Justification	Suggestion
22.	Income of minors - to increase exemption limits under section 10(32)	At present income of minors included in the hands of parents is exempt to the extent of Rs.1,500/- for each minor. The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years, limit of Rs.1,500/- fixed is woefully inadequate.	<i>It is suggested that this should be raised to at least Rs.10,000/- for each minor child.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



CHAPTER IV

COMPUTATION OF TOTAL INCOME



PART A-SALARIES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
23.	Re-introduction of standard deduction for salaried assessee- Section 16	Salaried employees are not allowed deduction of any expenses incurred during the course of the employment other than profession tax on employment. There are various expenses that the employees incur during the course of employment which they cannot claim as deduction. At the same time, the few exemptions that are available to them u/s 10 are subject to upper limits which have been fixed several years back and virtually serve no purpose on account of inflation. Employees during the course of their employment incur various expenses, including for upgrading skill, for rendering their services as employees, deduction for such expenses should be allowed. For avoiding leakage of revenue if any such deduction maybe a fixed sum or certain percentage of salary, say 25% of the salary, but maximum may be restricted upto say Rs. 5,00,000/- . Doing away with the multiple exemptions will help in cleaning up the Act and removing unwieldy provisions – thereby simplifying the law.	<i>Provisions similar to that of erstwhile standard deduction may be re-introduced. Simultaneously, the multiple exemptions that are available (with miniscule upper limits) may be done away with.</i>
24.	Deduction to salaried assessee- Payment for notice period	As per the prevalent norm, the employees are required to serve notice within the stipulated time before leaving the organisation. The notice period, however, varies from organisation to organisation. For example, in an	<i>It is suggested that said anomaly may be resolved and appropriate provisions be inserted so that income from notice period pay is chargeable in the hands of ex-employer and deduction of the</i>



Sr. No	Section	Issue/Justification	Suggestion
		organisation the notice period may be 90 days or an employee has to pay 90 days salary amount to the organisation as an employee may get a better job opportunity in another organisation wherein he is required to join within 30 days. Accordingly the employee has to give 30 days' notice in old organisation, and pay for short notice of 60 days. Generally, the contract of service also provides that in case the employer is not satisfied with the performance of the employee he may terminate his services by giving a notice of 30 days or 30 days salary. In case the employer suspends the employee with immediate effect he pays an amount equivalent to 30 days salary and claims deduction thereof. Such amount becomes taxable in the hands of the employee. However, in case the employee is required to pay notice period salary, no deduction of such amount paid is allowed to him. If the new employer agrees to bear the brunt of notice period pay, say of 60 days in above example, the said amount will be included in the total income of the employee and tax will be deducted thereon even if such income belonged to the ex-employer and is taxable in his hands. Thus, in effect the assessee will be liable to pay tax on 14 months' salary i.e. salary	<i>amount of notice period pay paid be made available to the employee as he has not effectively received that income.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		for more than 12 months without any deduction available to him.	
25.	Medical reimbursements for retired employees	Under section 17 of the Income-tax Act, medical reimbursements to employees are exempted from tax up to Rs.15,000 per annum. Further, the expenditure incurred by the employer for the medical treatment of the employees and his family in approved hospitals is also not treated as a perquisite in the hands of the employee. However, this tax benefit is not available to retired employees.	<i>It is suggested that the provisions of section 17 be amended to include retired employees for the tax benefit on medical reimbursements / hospitalization expenditure in approved hospitals.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
26.	Partial double taxation of contribution to superannuation fund - Section 17(2)(vii)	Section 17(2)(vii) of the Act, as amended by the Finance Act, 2016, provides that any contribution to an approved superannuation fund by the employer, to the extent it exceeds one lakh and fifty thousand rupees, will be taxable as a perquisite in the hands of the employee. Contributions to superannuation fund may or may not result in superannuation benefits to the employees, since there are various conditions to be fulfilled by the employees like serving a stipulated number of years, reaching a certain age etc. Further, the pension payments are subject to tax at the time of actual receipt by the employee after his retirement. This may lead to partial double taxation for the employee where the contributions had been taxed earlier also (when the contributions exceeded	<i>It is suggested that the employer contributions to an approved superannuation fund may be made fully exempt from tax. This will also encourage one of the key focus areas of the Government of creating a pension based society.</i>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		INR one lakh and fifty thousand rupees).	



PART C-INCOME FROM HOUSE PROPERTY

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
27.	Profits and gains of business or profession (Section 28)	In the recent supreme court ruling in Rayala corporation (P) Ltd V. ACIT reported in 72 TAXMAN 149 it has been decided that “where assessee company was having house property and its business was to lease out its property and to earn rent, income so earned as rent should be treated as 'business income', and not as 'income from house property’”.	<i>The Finance Act may consider the aforesaid decision and enact a suitable provision for treating certain rental income received by assesses as business income to end the infructuous litigations.</i>
28.	<i>Deduction for maintenance charges paid to societies, federation etc.- Section 23</i>	In most urban areas, maintenance of building is undertaken by the society, federation, company or common body and the expenses for such maintenance are substantial. The same need to be allowed as deduction against rental income so as to ensure that it is only the real income that is brought to tax. There is a spate of litigation that prevails in the country on account of this item of expense. Amending the law and allowing a deduction for the same would lead to considerable reduction in litigation. No provision presently exists to allow deduction for maintenance charges paid to a housing society etc even	<i>Contribution towards maintenance charges actually paid to society, company, federation or common body should be allowed as deduction.</i>



Sr. No	Section	Issue/Justification	Suggestion
		though it is a substantial and recurring expense. New clause be inserted to provide deduction of maintenance charges paid to Society, federation etc.	
29.	Section 23(5) – Deemed Taxability of unsold stock of house property after 1 year of lying vacant – Non-applicability of restriction contained in section 71(3A)	The Finance Act 2017 inserted sub-section (5) in existing section 23 to provide that where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period upto one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil. The same is being done considering the business exigencies in case of real estate developers and would provide much needed relief to such assesseees. Another related amendment has been made in section 71 by insertion of sub-section (3A) so as to provide that set-off of loss under the head "Income from house property" against any other	<i>Considering the interest deduction so far available under section 36(1)(iii) in respect of loan borrowed for construction of houses held as stock-in-trade, it is suggested that the restriction as per section 71(3A) may not be made applicable in the case of interest deduction in respect of income from house property held as stock-in-trade. This would go a long way in avoiding any negative impact on the real estate sector.</i>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		head of income shall be restricted to two lakh rupees for any assessment year. Now an issue has arisen in case of assessee engaged in the business of real estate sector. Normally, the interest which the builder assessee pays on borrowings which were taken for construction purpose is allowable under section 36(1)(iii) as his income is assessable under the head business and profession. However, on a combined reading of provisions as contained in section 23(5) and 71(3A), i.e., if the notional income is to be treated as "Nil" during the period of one year and thereafter, as income from house property, it appears that the interest deduction would be available under section 24 and consequently, the restriction contained in section 71(3A) would apply. This would create genuine difficulty, since the businesses were so far eligible for deduction of entire interest under section 36(1)(iii). Therefore, the restriction contained in section 71(3A) should not be applicable in the case of interest deduction in respect of income from house property held as stock-in-trade. Thus, on one hand, the insertion of sub-section (5)	



Sr. No	Section	Issue/Justification	Suggestion
		to section 23 of the Act deems the annual value of house property held as stock-in trade, as Nil, if the same is not let out; on the other hand, the amendment to section 71(3A) restricts the claim of set off of loss from house property (arising mainly on account of interest deduction) against income from any other head. This would curtail the benefit of entire interest deduction so far available under section 36(1)(iii).	
30.	<i>Deduction for ground rent other than u/s 24(a)</i>	At present, there is no provision for allowing deduction towards ground rent paid in computation of income from house property & the same has been merged into 24(a). Ground rent shall be allowed as deduction in addition to section 24(a) deduction since 24(a) mainly focuses on repairs & maintenance. The logic behind this suggestion is that the repairs by way of 30% standard deduction cannot accommodate a huge lease rent which may have to be paid if the land is taken on lease & building is constructed by the assessee.	<i>It is suggested that ground rent shall be allowed as deduction in addition to section 24(a)</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF THE INCOME-TAX ACT)</i>



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

Sr. No	Section	Issue/Justification	Suggestion
31.	Section 28(iia) – Sale of license	Section 28 provides for income that is chargeable to income tax under the head “profit and gains from business or profession”. As per sub-section (iia) of section 28, profit on sale of license granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 is chargeable to tax under the head “profit and gains from business or profession”. It is pertinent to mention that “The Import and Exports Control Act, 1947” as mentioned in section 28(iia) has been repealed. Further, advance Authorization issued in place of erstwhile advance licenses are not transferable as per the Foreign Trade Policy issued under Foreign Trade (Development and Regulation) Act, 1992.	<i>Since the Import and exports Control Act, 1947 has been repealed and advance Authorization issued in place of erstwhile advance licenses are not transferable as per the Foreign Trade Policy issued under Foreign Trade (Development and Regulation) Act, 1992, sub-section (iia) to section 28 be omitted.</i>
32.	Section 28(iid) – Duty Entitlement Pass Book Scheme no more in existence	Section 28(iid) provides that any profit on transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall be chargeable to income-tax under the head “Profits and gains of business or profession”. However, the aforementioned DEPB scheme was abolished w.e.f 1.10.2011 vide Notification No. 51/2011 – Customs, dated 22.06.2011.	<i>It is suggested that sub section (iid) to section 28 be omitted since the Duty Entitlement Pass Book Scheme was abolished w.e.f. 1.10.2011 vide Notification No. 51/2011 – Customs, dated 22.06.2011.</i>
33.	Section 32 - Depreciation in case of slump sale	The proviso to section 32 provides that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being	<i>a) Section 32 may be amended to clarify the legal position as to whether depreciation can be claimed on the basis of</i>



Sr. No	Section	Issue/Justification	Suggestion
		intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the de-merged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them. The following issues may be considered for appropriate amendment in the law : (a) An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act. (b) As per the current provisions of proviso to section 32 the depreciation can be claimed on the basis of proportionate number of days for which the assets were used by the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be. Due to practical and administrative difficulties, there may be a time gap	proportionate number of days by the transferor and the transferee company in case of slump sale also considering the proviso to section 32 read with section 170 of the Act. b) Due to practical and administrative difficulties, there may be a time gap between holding of the asset and using the asset so transferred. To avoid genuine difficulties in such cases, instead of the words, “used by them”, the words “held by them” may be substituted in the proviso to section 32. (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)



Sr. No	Section	Issue/Justification	Suggestion
		between holding of the asset and using the asset so transferred. To avoid genuine difficulties in such cases, instead of the words, "used by them", the words "held by them" may be substituted in the proviso to section 32.	
34.	Benefit under Section 35(1)(iia) should be increased to 200 per cent from the present level of 125 per cent	Section 35(2AB) of the Act has been gradually amended to provide increased tax benefits on expenditure incurred towards in-house R&D facilities i.e. from 125 per cent to 200 per cent. However, Section 35(1)(iia) of the Act, which provides tax incentives in respect of payments made to R&D company, has remained same at 125 per cent. The conditions specified by the DSIR for grant of approval for a recognized R&D facility/ company under Section 35(2AB) and Section 35(1)(iia) are the same and hence, the tax benefits provided under Section 35(1)(iia) should be at par with the tax benefits provided under Section 35(2AB) of the Act.	<i>It is recommended that the tax benefits under Section 35(1)(iia) should be increased to 200 per cent from the present level of 125 per cent.</i>
35.	Applicability of Section 35(2AB) of the Act on expenditure incurred on scientific research carried outside the in-house R&D facility approved by the prescribed authority	In the pharmaceutical Sector, discovery is a lengthy, risky and expensive proposition. In this business environment, necessitated by the current business needs, companies have to incur expenditure towards scientific research outside their Research & Development (R&D) facility for e.g. expenditure incurred outside the approved R&D facility towards clinical trials (including those carried out in approved hospitals and institutions by non-manufacturing firms), bioequivalence studies conducted in overseas CROs and regulatory and patent approvals, overseas trials, preparations of dossiers, consulting/ legal fees for filings in USA for new chemicals entities (NCE) and abbreviated new drug applications (ANDA) as approved by the Department of Scientific	<i>It is suggested that the existing provisions should be specifically clarified to allow weighted deduction in respect of expenditure incurred outside the R&D facility which are sometimes necessitated by the industry's business needs. Additionally, it could also be provided that where the risk of doing research is assumed by a company, the entire cost of R&D activities (whether</i>



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Sr. No	Section	Issue/Justification	Suggestion
		and Industrial Research (DSIR) which are directly related to the R&D, etc.	<i>outsourced or undertaken in-house) is eligible for weighted deduction in the hands of company undertaking the risk.</i>
36.	IT and ITES sectors should also be entitled to weighted deduction under Section 35(2AB) of the Act	Currently, there is no clarity whether a company engaged in the business of development and sale of software or providing IT / Information Technology Enabled Services (ITES) services, is eligible for weighted deduction on the R&D expenditure incurred by it. As per DSIR guidelines amount spent by a recognized in-house R&D unit towards foreign consultancy, building maintenance, foreign patent filing etc. are not eligible for weighted deduction under Section 35(2AB) of the Act. Such expenditure are essential in carrying out research at the approved R&D centers.	<i>It suggested to amend provisions of Section 35(2AB) of the Act to specifically include R&D with respect to the development and sale of software and providing relevant IT/ITES services.</i>
37.	Weighted deduction should be available on expenditure incurred on internally developed intangible assets	The DSIR guidelines provide that eligible capital expenditure on R&D will include expenditure on plant, equipment or any other tangible item only. It also provide that capital expenditure of intangible nature is not eligible for weighted deduction.	<i>It is recommended to provide weighted deduction for expenditure incurred on internally developed intangible assets under Section 35(2AB) of the Act.</i> <i>It is also recommended that any initial cost paid for acquiring R&D related intangible assets, which are used in the R&D unit should also be allowed for weighted</i>



Sr. No	Section	Issue/Justification	Suggestion
			<i>deduction under Section 35(2AB) of the Act.</i>
38.	Extension of the weighted deduction under Section 35(2AB) of the Act for a further period of 10 more years	The Finance Act, 2015, with a view to phase out weighted deduction under Section 35(2AB) of the Act, restricted the allowability of expenditure incurred on scientific research (other than expenditure in the nature of cost of any land or building) on in-house research and development facility incurred on and from 1 April 2020 to 100 per cent from the existing 200 per cent.	<i>With a view to achieve a growth rate of 8 per cent and put India on the growth trajectory and to ensure having a robust R&D database, it is suggested that the weighted deduction under Section 35(2AB) of the Act should be extended for a further period of 10 years. This would enable the country to be on par with the developed nations which have robust R&D centres fuelling growth in the economy.</i>
39.	Profit linked incentives for specified industries vis-a-vis investment-linked incentives - Section 35AD	Section 35AD of the Act extends investment linked incentives to taxpayers with respect to the capital expenditure incurred for setting up and operation of specified businesses. Further, once investment linked incentive for the capital expenditure is availed under this Section, no benefit shall be allowed in respect of such specified business under Chapter VI-A (Deductions in respect of certain incomes) and Section 10AA of the Act. The Finance Act, 2016 has amended section 35AD of the Act so as to reduce the deduction from 150 per cent to 100 per cent in the case of a cold chain facility, warehousing facility for storage of agricultural produce, an affordable housing project, production of fertilizer and building	<i>The profit-linked incentives currently available for infrastructure and crucial sectors should not only be expanded but also continued till the end of the next Five Year Plan to encourage investment and growth of India's infrastructure sector. With the governments 'Make in India' campaign, there would be a need to bring under the ambit of deduction of Section</i>



Sr. No	Section	Issue/Justification	Suggestion
		and operating hospitals with effect from 1 April 2017. Deduction under Section 35AD of the Act is an alternate form of accelerated deduction for the capital expenditure in the specified business. However, the cash flows of these capital intensive industries suffer on account of levy of MAT. This is because book profits continue to be higher than taxable profits (given that deduction for capital expenditure is not taken to the profit and loss account other than in the form of depreciation) and hence, MAT is paid by the industry during the incentive period. While MAT is creditable against normal taxes in future, the period for recovery of MAT paid could result in being longer than under profit linked incentives. Further, given the restriction on the years for carry forward of MAT, it is possible that MAT paid in initial years may not be recovered, especially for those taxpayers who have a longer period before reaching break-even.	35AD of the Act more sectors to further strengthen the industrial base of the country, for e.g. the steel industry being a high capital intensive industry, capital expenditure should be allowed as a deduction on the amount of expenditure incurred. It should be considered further reduce the rate of MAT more so for the infrastructure sector as levy of the same defeats the very purpose of extending tax incentives to the industry, especially given the high rate of MAT now.
40.	Clarification on amendment to Section 35AD(3)	The amendment to Section 35AD(3) of the Act introduced by the Finance Act, 2010, seeks to prevent a taxpayer from claiming dual deduction in respect of the same business. It appears that if a taxpayer carrying on a specified business does not claim deduction under Section 35AD of the Act, he may opt for deduction under the relevant provisions of Chapter VI-A or Section 10AA of the Act, if the same exist for such business and it is more beneficial.	A clarification should be issued that the taxpayer may exercise an option (where available to the taxpayer) to avail tax incentive under Section 35AD or Chapter VI-A/ Section 10AA of the Act, depending upon which is more beneficial to the taxpayer. Further, it is suggested that a



Sr. No	Section	Issue/Justification	Suggestion
			clarification may also be issued that in the event the taxpayer opts for the investment linked incentive under Section 35AD of the Act and the same is denied/ rejected at time of assessment proceedings (could be on account of non-satisfaction of prescribed conditions), in such a case the taxpayer should be eligible to make an alternative claim under Chapter VI-A or Section 10AA of the Act, on satisfaction of the conditions provided therein, notwithstanding the requirement stipulated in Section 80A(5) or 10AA of the Act. This is because, a taxpayer who is otherwise entitled to deduction in respect of qualifying profits of the specified business would lose such deduction on account of Section 80A(5) of the Act that mandates a claim for deduction under chapter VI-A be made in its return of income. As the taxpayer would not have claimed deduction under the provisions of Chapter VI-A/ Section 10AA of



Sr. No	Section	Issue/Justification	Suggestion
			<i>the Act in its return of income since claim was made under Section 35AD, such taxpayer would be precluded from claiming deduction in view of Section 80-A(5)/ Section 10AA of the Act.</i>
41.	Dilution of tax incentive under Section 35AD by insertion of Section 73A	The underlying idea behind allowing the investment linked incentive granted under Section 35AD of the Act is to enable the taxpayer to set-off the business losses incurred by this write-off against the taxable profits from their existing businesses and reduce their tax liability in the year of deduction and thereby to provide part of the resources of investment required for setting up of the businesses. However, the incentive so intended cannot be achieved owing to the insertion of Section 73A of the Act, which restricts the set-off/ carry forward of losses by specified business only against the profits and gains, if any, of any other specified business carried on by the taxpayer in that AY and the amount of loss not so set-off can only be carried forward and set-off against profits from specified business in the subsequent AYs.	<i>The losses from the specified business under Section 35AD of the Act ought to be made eligible for set-off against profits from other businesses of the taxpayer, and not restricted to be set-off against only the specified businesses, as it is not always the case that the taxpayer would only be carrying on the 'specified business'. In light of the above, Section 73A of the Act should be deleted.</i>
42.	Section 35AD and 43(1) – Cash payment exceeding Rs 10,000 to be disallowed – Exceptions contained in	In order to discourage cash transactions even for capital expenditure, the Finance Act, 2017 amended section 43(1) to provide that where an assessee incurs any expenditure for acquisition of any asset in respect which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing	<i>It is suggested that:</i> <i>(i) In the interest of certainty and to avoid retro-applicability of the provision, it is recommended that disallowance of depreciation should trigger only if cash</i>



Sr. No	Section	Issue/Justification	Suggestion
	Rule 6DD may be extended to section 35AD and 43(1) also	system through a bank account, exceeds ten thousand rupees, such expenditure shall be ignored for the purposes of determination of actual cost of such asset. Similar amendment is made in section 35AD. Further, cash payment limit under section 40A(3) is also reduced to Rs.10,000. Thus, the Finance Act 2017 disallowed even the capital expenditure incurred in cash thereby restricting the amount of allowable depreciation under section 32 with effect from 1 April 2018 i.e. AY 2018-19. Issues (1) There is no clarity whether disallowance will trigger if cash expenditure is incurred post 1st April 2017 or if asset is acquired after 1st April 2017. (2) As per the language of the proviso to section 43(1), it appears that whole of the expenditure for acquisition of any asset may be disallowed even if only a small part of the expenditure may have been incurred in cash. Say for example, expenditure on asset costing Rs.1 crore may be disallowed fully for depreciation purposes even if expenditure incurred in cash is only Rs. 10,000. (3) Permissible exceptions to the provisions of section 40A(3) and (3A) have been provided in Rule 6DD of the Income-tax Rules, 1962 having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors. Since similar situations may occur in case of compliance of the provisions/amendments to section 43(1)/35AD restricting the maximum	expenditure as well as asset acquisition is on or after 1 April 2017. (ii) Only such expenditure for acquisition of asset may be disallowed which has been incurred in cash and accordingly, depreciation under section 32 may be permitted for balance portion expended in non-cash mode. (iii) Exceptions on the lines contained in Rule 6DD may also be provided with respect to the amendments in section 35AD and 43(1) which restrict the maximum amount that can be paid/incurred in cash to Rs.10,000.



Sr. No	Section	Issue/Justification	Suggestion
		amount that can be paid in cash to Rs.10,000, exceptions on the lines provided in Rule 6DD may be considered.	
43.	Section 35D (a) Capital raising expenses	Expenses incurred for raising capital are being treated as capital in nature and no deduction is allowed in tax assessment. Section 35D provides for deduction in respect of some of the expenses, over a period of five years, subject to conditions and limits. Raising capital is necessary activity for carrying out the business activity. Not allowing deduction of expenses for raising capital increases cost of carrying out the business and adversely affects the competitiveness of the business	<i>Section 35D should be amended to allow deduction for all expenses incurred by an assessee for raising capital in five equal installments over a period of five years.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
	(b) Amortization of Capital expenditure	Cash outflows by way of capital expenditure logically reduce the income. However, certain preliminary expenditure allowed to be amortised under section 35D, there is no provision in the act for amortization of capital expenditure like fees paid for increase in authorized share capital and payment made towards elimination of competition etc. Such expenditures being capital in nature cannot be charged to revenue as there is no provision for claiming these expenses in computing the income. As a result there is a difference between real income & taxable income.	<i>It is suggested that provisions may be incorporated in the Act to allow amortisation of such capital expenditures which are essential to run the business.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
44.	Due date for crediting the contribution of employees to the respective fund–Section 36(1)(va)	Section 2(24)(x) of the Act, inter alia defines “Income”, to include any sum received by the employer from its employees’ as contribution towards certain specified funds. However, deduction for such income are available under section 36(1)(va), provided that the contributions collected by the employer are credited to the respective fund within the due date	<i>It is suggested that the due date defined under Explanation to Section 36(1)(va) shall be amended and accordingly the due date shall mean the due date for filing return of income</i>



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Sr. No	Section	Issue/Justification	Suggestion
	read with Section 2(24)(x)	specified under the relevant legislation of the fund. The employee's contribution credited to the employees account in the relevant fund after the due date specified under section 36(1)(va) are disallowed to the employer. Further, any payments made by the employer after the due date is also NOT allowed as a deduction in the year of payment. This causes undue hardship to the assessee especially during the economic turbulence. Further, the Employer's contribution made after the due date specified under the relevant social security legislation but deposited within the due date of filing return of income are allowed under the Act by virtue of Section 43B. It may be noted that the statutory laws under the respective contribution schemes have provisions to levy interest, penalty etc. for the delayed payment. Hence, disallowing a genuine business expenditure merely on the ground that it has been paid after relevant due date is not justified. On the subject there have various conflicting judgments. Where Hon'ble Uttarakhand High Court and Hon'ble Delhi High Court have considered the due date under section 36(1)(va) to be read in sync with the due date mentioned in section 43B, Hon'ble Gujarat High Court has given a different view. To remove the hardship caused to the assessee and to reduce avoidable litigations, it is suggested that deduction be allowed on the employee's contribution made before the due date of filing the return of income.	<i>under section 139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act. (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
45.	Corporate Social	Corporates are currently involved in various areas of social responsibility / community	<i>It is suggested that:</i> <i>a) The amendment</i>



Sr. No	Section	Issue/Justification	Suggestion
	Responsibility Costs – section 37	development as part of nation building. Further, the concept of Corporate Social Responsibility Costs has been introduced under Companies Act, 2013. The expenditure is mandatory in its nature and as such it is a statutory levy. Accordingly it deserves tax deduction. However, amendment made in section 37 vide Finance (No. 2) Act, 2014 has made it clear that expenditure incurred on activities relating to CSR under Companies Act, 2013 will be deemed to be a non business expenditure. Providing suitable tax incentives in respect of such Corporate Social Responsibility Costs would accelerate the process and ensure that the country can reach the goal of being a developed nation in the near future and is the need of the hour.	<i>made in Section 37 vide Finance (No. 2) Act, 2014 should be reconsidered.</i> <i>b) A deduction of the expenditure on community /social development (both capital and revenue) be introduced, specifically covering critical areas like education, health, animal husbandry, water management, women empowerment, poverty alleviation and rural development.</i> <i>c) Even in cases where a company has its own trust or foundation, the deduction in respect of expenditure incurred for CSR activities should be allowed.</i> <i>d) CSR expenditure is allowed by way of donation to Prime Minister Relief Fund/ Trust registered u/s. 80G/ associations</i>



Sr. No	Section	Issue/Justification	Suggestion
			<i>approved u/s. 35AC. If deduction of CSR expenditure is not allowed, this shall be discriminatory for those corporates, who may like to carry out CSR activities on their own.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
46.	Disallowance for TDS defaults on payments to non-resident –Section .40(a)(i)	In relation to section 40(a)(ia), Explanatory Memorandum to Finance (No.2) Bill 2014/CBDT Circular No. 1 of 2015 explained that disallowance of whole of the amount of expenditure in case of payments to residents for whom TDS is a merely mode of collection of tax and not discharge of final tax liability results into undue hardship for the taxpayers and accordingly, s.40(a)(ia) is amended to restrict disallowance only to 30% of the expenditure amount. Thus, disallowance should be in proportion to the TDS rates which apply to residents which ranges from 2% to 30%. However, similar changes are not made in section 40(a)(i) which governs the non-deduction of TDS on payments to non-residents. It may be noted that TDS rates applicable to majority of payments to non-residents by way of interest, royalty and FTS also are in the range of 5% to 10% which are also final tax payable by non-resident payees. Disallowance of 100% of expenditure involving payments to residents effectively results in recovery of 30% tax by the Revenue from the payers whereas the final	In line with section 40(a)(ia) of the Act, it is recommended that s.40(a)(i) should also be amended restricting the disallowance to 30 percent of the amount of expenditure



Sr. No	Section	Issue/Justification	Suggestion
		tax payable by non-residents is only in the range of 5% to 10%.	
47.	Section 40(a)(ia) - Disallowance of expenditure for non-deduction of tax at source on payment made to resident	Section 40(a)(ia) is amended via Finance (No. 2) Act, 2014 to restrict the amount of disallowance for non-deduction of tax to 30% of expenditure. The proviso is also amended to the effect that 30% of such sum shall be allowed as a deduction in computing the income of the previous year in which tax has been paid. However, the language of the proviso raises a doubt as to whether any expenditure disallowed 100% in earlier year(s) will be allowed fully on TDS compliance in the current year. The wordings of the said proviso indicate that only 30% of amount of expenditure disallowed in the past year(s) will be allowed as a deduction.	<i>Since the language of the present amended provision of section 40(a)(ia) does not allow full claim of the 100% disallowance made in earlier years, it is suggested that the said amendment may be brought by way of insertion of a separate sub-clause instead of amending the existing sub-clause (ia) to section 40(a). This will maintain status quo in respect of allowability of such expenditure (which was 100% disallowed under this provision during the Assessment year 2014-15 and before), in the subsequent year on TDS compliance.</i>
48.	Disallowance of expenses incurred in favour of members - Section 40(ba)	S.40(ba) does not permit deduction in the hands of AOP of any interest, salary, bonus, commission or remuneration paid to member of AOP. In many cases, a consortium may be formed by two or more members to jointly bid for big projects wherein each of the members brings in his own expertise and resources. If the consortium is assessed as AOP, the AOP's profits are assessed at higher amount by disregarding the commercial understanding between the parties for sharing of profits after factoring in specialised services or expert knowledge made available by some of its members. This results in disproportionate sharing of	<i>To provide level playing field between firms and AOPs, an amendment may be made to provide for non-application of section 40(ba) for payments towards specialized services [i.e. expert knowledge] rendered by consortium members subject to the condition that deduction of payments made by consortium to its</i>



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Sr. No	Section	Issue/Justification	Suggestion
		tax burden between the members. Unlike s.40(ba), s.40(b) permits deduction for interest and remuneration paid to partners of firm/LLP as per partnership agreement upto specified limits. This enables the partners to share the tax burden proportionate to their contribution to the firm.	<i>members will be allowed only if the same has been considered as income by the members in their respective return.</i>
49.	Section 40A(3) – Payment to electricity companies	Currently, bill payments related to electricity consumption made to electricity companies are not allowed through cheque in case payment is made after a certain date or delayed/late payment after due date. Assessee in such situations is left with no option but to pay in cash. The same is disallowed under section 40A(3) in case payment exceeds Rs 20,000 as Rule 6DD currently do not provide exception in such cases..	<i>It is suggested that the provisions of section 40A(3) be rationalized to exclude payments in cash to Electricity companies where the payment is not accepted beyond a date through cheque. Due to this genuine electricity payments made in cash due to commercial expediency are getting disallowed and hardship is caused to assessee.</i>
50.	Depreciation on assets acquired in satisfaction of debts- Section 43(1)	In many cases, assessees engaged in the business of financing assets, acquire such assets which were used by the borrower for the purpose of his business or profession. Post-acquisition of such assets, the finance companies lease out the same to another person under operating lease. The acquisition of assets in satisfaction of debts, many a times, exceeds the written down value of the assets as on the date of acquisition. The existing definition of the term “actual cost” given in section 43 (1) of the Act does not allow the financing companies to claim depreciation at the price/cost at which the assets are acquired by it from the borrower. Considering the fact that Asset Financing Company is acquiring the depreciable asset from the borrower for a particular price and using it for the	<i>Suitable Explanation may be inserted to the definition of the term “actual cost” given in section 43(1) of the Act.</i>



Sr. No	Section	Issue/Justification	Suggestion
		purpose of its business by way of leasing out the same to the lessee, it should logically be entitled to claim depreciation on the "actual cost" at which it is acquired from the borrower.	
51.	Explanation 5 to Section 43(1) – "building" to be replaced by "assets"	Section 43 deals with actual cost. There are 14 explanations provided in section 43(1) describing the method of computation of actual cost of asset under different situations. Explanation (5) deals with actual cost in respect of building previously used by the assessee for certain purposes & subsequently brought into business or profession. According to this explanation, the building so brought in should be notionally depreciated & the resultant WDV as at the date of introducing the building into business shall be deemed to be the actual cost. While all other explanations use the term "asset" or "capital asset", Explanation 5 uses the term "building" instead of "assets". It has therefore been held that this explanation would not apply to all other assets other than building.	<i>In line with the other explanations to section 43(1), it is suggested that the term "Assets" be used instead of the term "building" in Explanation 5 to section 43(1).</i>
52.	Section 43A - Exchange fluctuation loss due to sharp fall in Rupee value	Section 43A was inserted in the Income-tax Act, 1961 by Finance (No. 2) Act 1967, which permitted Capitalization of Foreign Exchange Fluctuation Loss in the borrowing used for acquisition of assets outside India. The exchange fluctuation loss on borrowings used for domestically acquired assets is not permitted to be capitalized for tax purposes. Over the years Rupee has depreciated significantly against the US \$ severely impacting the industry particularly those who have exposure to External Commercial Borrowings (ECBs) and Foreign Currency Convertible Bonds (FCCBs).	<i>It is suggested that Section 43A be amended to allow Capitalization of such foreign exchange loss even for domestically acquired asset.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



Sr. No	Section	Issue/Justification	Suggestion
		The provisions of Section 43A are similar to the provision contained in Schedule III to the Companies Act, 2013. As per 'instructions in accordance with assets should be made out' as contained in Schedule VI, vide notification No. GSR 129 dated 3-1-1968, the following instructions were inserted:- <i>"Where the original cost aforesaid and additions and deductions thereto, relate to any fixed asset which has been acquired from a country outside India, and in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there has been an increase or reduction in the liability of the company, as expressed in Indian currency, for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of moneys borrowed by the company from any person, directly or indirectly in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability is so increased or reduced during the year, shall be added to, or, as the case may be deducted from the cost, and the amount arrived at after such addition or deduction shall be taken to be the cost of the fixed asset."</i> The above provisions were deleted vide notification no. GSR 226(E), dated 31-03-2009 w.e.f. 31-03-2009. The Schedule VI has been amended vide Notification No. SO 447(E) dt. 28-2-2011 w.e.f. 1-4-2011. In the revised Schedule VI (as also the New Schedule III to the Companies Act, 2013), under the heading	



Sr. No	Section	Issue/Justification	Suggestion
		“General Instructions” Sr. No. 1 it is stated as under: <i>“Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head/sub-head or any changes inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements of this Schedule shall stand modified accordingly.”</i> The Accounting Standards have been notified vide notification GSR 739(E) dt. 7-12-2006. For the above purpose the relevant Accounting Standard is AS-11 ‘The Effects of Changes in Foreign Exchange Rates’ Para 46 and Para 46A of AS-11 were inserted vide notification no G.S.R. 225(E) dated 31st March, 2009 and G.S.R. 914(E) dated 29th December, 2011 respectively. The effect of these notifications is that foreign exchange difference on foreign loans can be capitalized to the cost of the depreciable assets even if the assets are acquired in India. No distinction is made whether the assets are imported or are purchased within India.	
53.	Section 43CA - Special provision for full value of consideration for transfer of assets other than capital	This section provides for adoption of stamp duty value in case of transfer of land or building or both held as stock-in-trade. Several issues have cropped up due to implementation of this section in its present form and suggestions thereof are as under: a) This amendment encourages structuring of real estate transactions in such a manner	<i>a) The section in its present form may not be desirable and may lead to structuring of transactions. Thus, the provision of this section needs to be reconsidered.</i> <i>(SUGGESTIONS FOR</i>



Sr. No	Section	Issue/Justification	Suggestion
	assets in certain cases.	to circumvent increased tax liability arising on account of adoption of stamp duty value. For example- Having agreed to sell the property at Rs. 80 Lakhs, as against the value of Rs. 100 Lakhs considered for stamp duty purposes, the transaction may be structured to record the transaction value at Rs.100 Lakhs with a rebate of Rs. 20 Lakhs.	RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
		b) This provision results in double taxation of income, since, the difference between the stamp duty value and actual consideration would be taxable in the hands of the seller. However, the buyer can claim only the actual cost as deduction while computing his business income or capital gains arising at a later point of time when he sells the asset.	b) Suitable provisions may be incorporated in the statute so that the same income is not subject to tax twice.
		c) This section provides for adoption of stamp duty value on the date of agreement, where the date of agreement is different from the date of registration, provided at least a part of the consideration has been received on or before the date of agreement by any mode otherwise than by way of cash. In this context, it may be clarified whether "otherwise than by way of cash" would include transfer by book entries, transfer by Hundi, promissory notes etc. and transfer by exchange agreement.	c) It may be clarified as to whether the term "otherwise than by way of cash" would include transfer by book entries, transfer by Hundi, promissory notes etc. and transfer by exchange agreement.
		d) Further, in a case where the year of agreement and the year of registration are different, a clarification is required as to whether the tax liability would arise in the year of agreement or year of registration or the year in which possession is obtained.	d) It may be clarified as to whether the tax liability would arise in the year of agreement or year of registration or the year in which possession is obtained.
		e) Since only capital assets are excluded from the applicability of this section, agricultural land which is not included in the	e) It is suggested that agricultural land be specifically excluded



Sr. No	Section	Issue/Justification	Suggestion
		definition of capital asset may fall within the scope of this section. Therefore, specific exclusion of agricultural land from the ambit of this provision may be provided for.	<i>from the ambit of this provision.</i>
		f) This section provides for adoption of stamp duty value in case of “transfer” of land or building or both held as stock-in-trade. It may be noted that the definition of term “transfer” in section 2(47) is in relation to a capital asset only. The intended scope of coverage of the term “transfer” for the purpose of section 43CA needs to be defined.	<i>f) It is suggested that the term “transfer” be specifically defined for the purposes of section 43CA.</i>
54.	Taxability of interest on Non-Performing Asset	Section 43D of the Act provides that income by way of interest in relation to bad and doubtful debts of a public financial institution or a scheduled bank or a co-operative bank or a state financial corporation or a state industrial investment corporation or a housing finance company is chargeable to tax in the previous year in which it is credited to the profit and loss account or, as the case may be, in which it is actually received. The reason for introduction of section 43D in the Act, was that interest from bad and doubtful debts in the case of banks and financial institutions is difficult to recover and taxing such income on accrual basis reduces the liquidity of the bank without actual generation of income. Therefore, with a view to improve the viability of banks and financial institutions, the provisions of section 43D were introduced w.e.f. AY 1992-93. Subsequently with a view to boost the viability of housing finance companies and to provide a boost to the housing sector, w.e.f. AY 2000-01, the benefit of the said provision was also extended to housing finance companies (a category of NBFCs) which are regulated by the National	<u>Amendment to section 43D</u> <i>In light of the above, an amendment should be made to section 43D of the Act, to extend the benefit of section 43D to “Non-Banking Financial Company” (other than housing finance companies which are already covered by the provisions of section 43D), whereby interest income on non-performing assets should be taxed only on receipt basis.</i> <u>Amendment to Rule 6EA of Income-tax Rules (‘the Rules’)</u> <i>Section 43D refers to the income by way of interest in relation to</i>



Sr. No	Section	Issue/Justification	Suggestion
		Housing Bank. Further, w.e.f. AY 2018-19, to provide a level playing field to co-operative banks, the provisions of section 43D have recently been rationalised to extend the benefit of the said provisions to co-operative banks as well. While NBFCs (other than housing finance companies which are already covered by the provisions of section 43D) have not been specifically covered by the aforesaid provisions, various judicial precedents⁴ have held that interest income on NPA's under the provisions of the Act should be chargeable to tax only on receipt basis following the principle of real income. However, in absence of specific provisions under the Act, this matter has constantly been a subject matter of litigation. <u>Impact of Income Computation and Disclosure Standards ('ICDS') on taxation of Interest on NPAs</u> The Central Board of Direct Tax ('CBDT') has recently notified the Income Computation and Disclosure Standards ('ICDS') which are effective from AY 2017-18. As per ICDS IV on Revenue Recognition, interest income shall be recognised on time proportionate basis i.e. on accrual basis. This has been further clarified by the CBDT in its recent FAQs issued on 23 March 2017, which provides clarification on various aspects of applicability of ICDS. As per Question 13 of the FAQ, it has been clarified that interest accrues on time basis. Further, as per Question 2 of the FAQ,	<i>such category of bad and doubtful debts as may be prescribed in Rule 6EA of the Rules having regard to guidelines issued by RBI in relation to such debts.</i> <i>Accordingly, consequential amendment should also be made in Rule 6EA of Rules, which provides special provision regarding interest on bad and doubtful debts of banks and financial institutions, to include the "Non-Banking Financial Company" as well.</i> <u>Amendment to section 43B</u> <i>Consequential amendment should also be made in section 43B of the Act which provides a list of deductions which are allowed to the payer on actual payment basis. As represented above, given that interest income on NPA for</i>

⁴ UCO Bank vs. CIT [1999] 237 ITR 889 (SC); CIT v. Vasisth Chay Vyapar Ltd [2011] 330 ITR 440; CIT v. India Equipment Leasing Co. Ltd. [2007] 293 ITR 350 (Mad); CIT v. Elgi Finance Ltd., [2007] 293 ITR 357 (Mad); Ted Co Investment and Financial Services (P.) Ltd. v. DCIT [2003] 87 ITD 298 (Delhi)



Sr. No	Section	Issue/Justification	Suggestion
		CBDT has also clarified that provisions of ICDS shall prevail over past judicial precedents (thus overriding the real income principle laid down by various judicial precedents). However, recently it has been held by the Hon' ble Delhi HC in the case of Chamber of Tax Consultants v. Union of India, dated 8.11.2017 that, <i>inter alia</i>, ICDS cannot supercede past judicial decisions. In view of the above CBDT clarifications, it may be challenging for NBFCs (other than housing finance companies) to adopt the position of taxing interest on NPA on receipt basis, severely impacting their cash flows and liquidity. Like Banks even NBFCs are regulated by Reserve Bank of India ('RBI') and are mandated to follow RBI guidelines including on the prudential norms. As per RBI circular on NBFC (Deposit Accepting or Holding) Prudential Norms, Banks as well as NBFCs are required to create provision for NPAs. Further, as per the prudential norms, Banks as well as NBFCs shall recognise interest income on NPA only when it is actually realised. However, despite these similarities between a Bank and a NBFC, there is a distinction in the applicability of various tax provisions which puts NBFCs in a disadvantageous position vis-à-vis other financial institutions including Banks. Thus, the need for a uniform practice and level playing field in terms of tax treatment for NBFCs is indispensable. In this regard, as mentioned above, in accordance with the directions issued by the RBI, similar to other financial institutions, NBFCs also follow prudential norms and are required to create provision for NPAs and defer income in respect of their non-performing accounts. Considering the fact that similar to Banks, NBFCs are also engaged in financial	<i>"Non-Banking Financial Company" should be taxed on receipt basis, deduction to the payer of interest on NPA to "Non-Banking Financial Company" should be allowed on actual payment basis.</i>



Sr. No	Section	Issue/Justification	Suggestion
		lending to different sectors of the society, the Finance Act 2016, has expanded the scope of section 36(1)(viiia) of the Act, by providing deduction to the extent of 5% of total income in respect of provision for bad and doubtful debts to NBFCs. However, in absence of specific coverage of NBFCs (other than housing finance companies which are already covered by the provisions of section 43D) in section 43D and in light of the ICDS provisions, NBFCs would be required to recognise income on such NPAs for tax purposes on an accrual basis, resulting in levy of tax on income which may not be realised at all. This would severely impact the liquidity of NBFCs in terms of cash flow pay-outs, impacts their profitability and also has a consequent impact on their cost of operations. Given the same, it is appropriate in all fairness that the provisions of section 43D which recognises the principle of taxing interest income on NPAs on receipt basis to certain banks and financial institutions, also be extended to NBFCs (other than housing finance companies which are already covered by the provisions of section 43D).	
55.	Section 44AD – Clarifications required regarding provisions of section 44AD	Relevant provisions The Finance Act, 2016 amended the provisions of section 44AD w.e.f. from 1.4.2017. The relevant extracts of the amended provisions of section 44AD are given hereunder: “(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not	<i>It is suggested that appropriate clarification be issued as to, whether or not, the eligible assessee carrying on an eligible business, who:</i> a) <i>has NOT in any previous year declared profits in accordance with the provisions of section 44AD AND</i> b) <i>has total</i>



Sr. No	Section	Issue/Justification	Suggestion
		be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1). (5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB” [emphasis supplied] As per the plain reading of the section 44AD, it is clear that in case the eligible assessee engaged in an eligible business, is declaring profits equal to 8% (or 6% as the case may be) of the total turnover or gross receipts or any sum higher than 8% (or 6% as the case may be), such sum will be treated as income under the head “Profit and gains of Business or profession”. Such assessee will not be required to maintain books of account or other documents as per the provisions of section 44AA and also will not be required to get the accounts audited under section 44AB of the Income-tax Act. This situation remains the same as per the provisions of the erstwhile section 44AD. Sub-section (4) of the amended section 44AD requires that the assessee who declares profit otherwise than as per the provisions of section 44AD(1) in any of the 5 AYs succeeding the PY in which the	income exceeding the maximum amount which is not chargeable to income-tax AND c) has a turnover less than the limits prescribed under section 44AB AND d) claims the profits from the eligible business to be less than 8% (or 6% as the case may be) of total turnover or gross receipts shall be required to get the books of accounts audited and furnish a report of such audit as required under section 44AB of the Income-tax Act, 1961. Also, it may be clarified, whether or not, an assessee who has opted for presumptive provisions under section 44AD in the AY 2016-17, would be hit by the provisions of section 44AD(4) and 44AD(5) if he does not opt for presumptive tax provisions under section 44AD in the AY 2017-18.



Sr. No	Section	Issue/Justification	Suggestion
		assessee has computed profits as per section 44AD, shall not be eligible to claim profit as per the provisions of section 44AD for the next 5 Assessment years. Further, section 44AD(5) provides that such an assessee (to whom the provisions of sub-section (4) are applicable) and whose total income exceeds the maximum amount which is not chargeable to income-tax will be required to maintain books of account or other documents as per the provisions of section 44AA and also will be required to get the accounts audited and furnish a report of such audit under section 44AB of the Income-tax Act, 1961. Issue/ Concern In effect, the eligible assessee carrying on an eligible business, who: a) has declared profits less than 8% (or 6% as the case may be) of the total turnover or gross receipts <u>in any of the five assessment years subsequent to the assessment year relevant to the previous year in which eligible assessee declares profit at 8% or more</u> AND b) has total income exceeding the maximum amount which is not chargeable to income-tax shall be required to keep and maintain such books of account and other documents as required under section 44AA and get them audited and furnish a report of such audit as required under section 44AB <u>for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).</u> The amended provisions are applicable from 1.4.2017 ie AY 2017-18 (PY 2016-17). The provisions of the amended section 44AD provide for a situation wherein the assessee shall not be eligible to claim the benefit of the provisions of this section for	



Sr. No	Section	Issue/Justification	Suggestion
		five assessment years <u>SUBSEQUENT to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1)</u>. The treatment in respect of a situation, where the eligible assessee has an eligible business with turnover LESS than 1 crore (say Rs. 50 Lakhs) and has declared profit LESS than 8% (or 6%, as the case may be), for the first time in the previous year 2016-17 or in the previous years 2016-17 and thereafter, has not been covered by the amended provisions. The erstwhile section 44AD(5) required such assessee to maintain their books of account and other documents as per the provisions of section 44AD and also get the accounts audited and furnish a report of such audit under section 44AB of the Income-tax Act, 1961. Such eligible assessee are in a state of confusion as to whether or not they are required to get their books of account audited and furnish the same as per the provisions of section 44AB of the Act.	
56.	Section 44AD – Deletion of proviso to sub-section (2) providing for deduction of interest and remuneration paid to partners by firm from the presumptive income under section 44AD	The amendment made via the Finance Act, 2016 to disallow deduction of expenditure in the nature of salary, remuneration, interest paid to the partner as per section 40(b) out of presumptive income. This amendment would hit small and medium firms, especially running family businesses. Taxing the entire income of the firm, without deduction for partner's salary/interest paid within the permissible limits set out in section 40(b), at flat rate of tax at 30% may hit the small and medium firms badly and adversely affect their business. This would be against the government's objective of facilitating ease of doing business.	<i>For facilitating ease of doing business by small firms and removing the genuine hardship of having to pay higher taxes on their presumptive income on account of the denial of deduction in respect of remuneration paid to partners within the limits set out in section 40(b), the proviso to section 44AD(2) may be</i>



Sr. No	Section	Issue/Justification	Suggestion
	– Proviso to remain/restored to avoid genuine hardship to small and medium firms	It is pertinent to mention here that the same issue had crept in the past as well. While introducing presumptive income for firms in the Finance Bill 1994, initially there was no provision providing for deduction of interest and remuneration to firm assesseees. However, the said proviso was introduced vide Finance Act 1997, thereby giving effect to the true intent of the law, and that too with retrospective effect from 01-04-1994.	<i>restored. Similarly, separate deduction may be allowed for professional firms as well in respect of remuneration paid to partners under the new section 44ADA.</i>



Sr. No	Section	Issue/Justification	Suggestion
57.	Section 44AD- Presumptive Income – Some Issues	Section 44AD was repealed w.e.f. 01/04/2011 i.e. from AY 2011-12. According to the new provisions, in case of an eligible assessee engaged in eligible business, income shall be deemed equal to a sum @ 8% of the turnover or higher income as per books. Section 44AD is applicable to any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE, agency business, commission / brokerage income business and whose total turnover or gross receipts in the previous year does not exceed an amount of Rs. 2crore. It was further amended by the Finance Act, 2016. Applicability of section 44AD The Finance Act, 2012 had inserted sub-section (6) with retrospective effect from 1st April, 2011 to clarify that the presumptive tax provisions under section 44AD shall not be applicable to, inter alia, persons earning income in the nature of commission or brokerage or persons carrying on an agency business. Further, the section 44AD(6) apparently seems to exclude the applicability to persons carrying on profession, agency business and earning commission or brokerage. It is possible that such persons have other businesses eligible for presumptive taxation under section 44AD. Therefore, it is suggested that the definition of “eligible business” be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.	<i>It is suggested that instead of sub-section 44AD(6), the definition of “eligible business” be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.</i>
58.	Benefit of presumptive taxation to LLP	Section 44AD relating to presumptive taxation applies only to businesses run by residents Individual, HUF and Firms excluding LLP. Tax on presumptive basis should be extended to all assesseees, including a LLP. Only	<i>The benefit of section 44AD should also be made available to LLP.</i>



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Sr. No	Section	Issue/Justification	Suggestion
	- Section 44AD	section 44AD excludes LLP, for which there appears to be no cogent reason. Otherwise under the Act, a LLP and a Firm are treated at par.	
59.	Omission of sub-section (4) to Section 44AD	In section 44AD of the Income-tax Act, with effect from the 1st day of April, 2017,— (a) in sub-section (2), the proviso shall be omitted; (b) for sub-sections (4) and (5), the following sub-sections shall be substituted, namely:— “(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1). The businesses are highly unpredictable and casting additional burden of continuous reporting of presumptive income for five years will be counterproductive and small businesses will be hit hard and will be pushed out of simplified scheme by this amendment defeating the very purpose of introducing presumptive taxation and will severely affect ease of doing business.	<i>The new sub section (4) may be deleted and the concept of declaration of deemed income for continuous period of 5 years to be removed and status quo may be maintained.</i>
60.	Section 44ADA - Special provision for computing profits and gains of profession on presumptive basis - Issues and	The Finance Act, 2016 has inserted a new section 44ADA providing for special provision for computing profits and gains of profession on presumptive basis. This measure would definitely help the specified professionals in payment as well as compliances under the income-tax law.	



Sr. No	Section	Issue/Justification	Suggestion
	concerns arising there from to be addressed		
	a) Threshold limit of Rs 50 lakhs may be increased	The sub-section (1) provides that: “Notwithstanding anything contained in sections 28 to 43C, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent. of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head “Profits and gains of business or profession”. The threshold limit of Rs 50 lakhs appears to be low. Consequently, this provision may not achieve the intended objective of providing relief to professionals in the small and medium segment. Even the Income Tax Simplification Committee headed by Justice R V Easwar recommended a threshold limit of Rs 1 crore. This appears to be a more justifiable limit considering the present economic conditions prevailing in the country.	<i>It is suggested that the threshold limit of Rs 50 lakh may be raised appropriately so that a sizable percentage of professionals in the small and medium segment are covered under the said provisions; which would ultimately lead to the achievement of stated objective of introducing the new provision.</i>
	b) Rate of estimated tax @ 50% too high	The rate of 50% appears to be on the higher side and may cause very high tax incidence on such professionals particularly since the scheme is intended to cover professionals with low gross receipts/total turnover resulting in low margins due to nature of work and high competition. This high rate	<i>It is suggested that the estimated rate of income @ 50% of the total gross receipts may be reduced appropriately considering the high</i>



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Sr. No	Section	Issue/Justification	Suggestion
		may cause a lot of professionals not to opt for this scheme thereby defeating the ultimate objective of introducing this provision. Considering the above reasons, the profit @ 50% is difficult to achieve specially for intended professionals with low gross receipts/total turnover. Also, the Income Tax Simplification Committee headed by Justice R V Easwar has recommended the rate of 33.33% of the receipts as the income from profession.	<i>cost of providing the services by specified professionals specially the small tax payers having income from profession.</i>



PART E-CAPITAL GAINS

Sr. No	Section	Issue/Justification	Suggestion
61.	Section 45(5A) - Special provision for computation of capital gain in case of joint development agreement (JDA) - Certain concerns to be addressed and scope to be enlarged	The Finance Act 2017 inserted sub-section (5A) in the existing section 45 to provide that the capital gains arising to an individual or Hindu undivided family under a Joint Development Agreement shall be taxed in the year in which completion certificate for the whole or part of the project is received, based on the stamp duty valuation on the date of issue of certificate of completion as increased by cash consideration received, if any. However, the above provisions shall not apply where the assessee transfers his share in the project on or before the date of issue of said certificate of completion, and the capital gains shall be deemed to be the income of the year in which such transfer takes place. Relief is provided to individuals and HUFs on transfer of capital asset by postponing the date of taxability from the date of transfer to the date of obtaining of the Completion Certificate which was a matter of concern since quite a long time. This is a very welcome provision which addresses the concern of the tax payer in having to pay tax when he has still not realised the income from the project.	<i>It is suggested that:</i> <i>a) In a case, where only some of the units of flats/floors are transferred by the owner when the project is in progress, the benefit of this provision may not be denied in respect of capital gains arising from sale of the entire share of owner's property. The benefit may continue to be available in respect of capital gains arising from those units which are transferred after receipt of completion certificate. This would address the concern of the tax payer and at the same time, the Government would realise revenue at an early point of time in respect of those units which were transferred when the project is in progress.</i> <i>b) The benefit of this section may be extended to assesseees other than individuals and HUFs also.</i> <i>c) The benefit of this section may also be extended to cases where the property is held as a business asset.</i> <i>d) The safeguards contained in section 50C may be</i>



Sr. No	Section	Issue/Justification	Suggestion
		Issues a) In case the owner transfers his share of the property before receipt of the Completion Certificate, then, the benefit envisaged in this amendment will not be available to him. This may cause genuine difficulty since typically in these kinds of JDAs, the owner receives several units of flats/floors as his share of property and while the project is in progress some of the units may be sold by him. Since only some of the units may be transferred when the project is in progress, the benefit of this provision may not be denied in respect of capital gains arising from sale of his entire share of property. b) The applicability of this section has been restricted to Individuals and HUFs. The difficulty envisaged by the legislature is faced by all assessees and therefore, this section may be made applicable to all classes of assessees. c) Due to sluggishness in the economy and scarcity of funds, developers too are entering into this kind of arrangement wherein they forgo part of their total profits by entrusting the task of development to another developer who has the funds required for development of the property. Therefore, similar provision may also be	<i>incorporated in section 45(5A) as well.</i> <i>e) In order to ensure symmetry and consistency, the definition of Competent authority may be the same as per section 2(p) of the Real Estate (Regulation and Development) Act, 2016 wherein "Competent Authority" has been defined as follows- "competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;</i> <i>f) In order to enable the assessee to claim exemption under section 54/54F, it is suggested that the time limit under sections 54/54F are reckoned from the date of issuance of completion certificate.</i>



Sr. No	Section	Issue/Justification	Suggestion
		introduced for property held as a business asset. d) The aforesaid provisions appear to be in line with the existing provisions of section 50C. However, certain safeguards contained in section 50C do not find place in the section 45(5A). For example, section 50C provides that where the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer, then the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer. Similar safeguards may be incorporated in section 45(5A) as well, in a case where stamp duty value is higher than FMV. e) Competent authority is defined in the Explanation below section 45(5A) to mean the authority empowered to approve the building plan by or under any law for the time being in force. This does not appear to be in sync with the definition of “competent authority” as per section 2(p) of the Real Estate (Regulation and Development) Act, 2016. f) The provisions of this sub-section defers the taxability of capital gains to the year of issuance of the completion certificate. However, the time	



Sr. No	Section	Issue/Justification	Suggestion
		limit for claiming benefit under sections 54 and 54F of the Act is reckoned from the date of transfer.	
62.	Limited Liability Partnership (LLP)- (a) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.	LLP though named as Limited Liability Partnership but for all practical purposes it is a body corporate having perpetual succession. As business grows there will be merger, amalgamation, demerger of LLP's as well. At present merger and amalgamation of companies is Revenue neutral.	<i>It is suggested that similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
	(b) Section 47 – Insertion of clause (viab) to provide exemption in respect of transfer of capital asset consequent to amalgamation of foreign companies - Consequent exemption to be provided in respect of transfer of shares by resident shareholders	Clause (viab) is inserted in section 47 so as to provide exemption in respect of any transfer in a scheme of amalgamation, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company. However, no clause has been inserted to provide consequent exemption in respect of transfer of shares by the resident shareholders of amalgamating foreign company in consideration of allotment of shares of amalgamated foreign company. This appears to be an inadvertent omission, since in case of exemption under section 47(vi) in respect of transfer of	<i>New clauses may be inserted in section 47 to provide for</i> <i>(i) consequent exemption in respect of transfer of shares by the resident shareholders of the amalgamating foreign company if transfer is made in consideration of the allotment to him of any shares or shares in the amalgamated foreign company.</i> <i>(ii) exemption in respect of transfer in a scheme of business reorganisation of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company</i>



Sr. No	Section	Issue/Justification	Suggestion
		capital asset in a scheme of amalgamation by an amalgamating company to the amalgamated company, where the amalgamated company is an Indian company, consequent exemption has been provided under section 47(vii) in the hands of the shareholders of the amalgamating company for transfer of shares of amalgamating company in consideration of allotment of shares of amalgamated company. Further, transfer in a scheme of business reorganization of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company should also be exempt under section 47. Business reorganization may be defined to mean the reorganization of business, otherwise than by way of amalgamation or demerger of foreign companies.	
	(c) Consequential amendment required in section 47(xiiib)	The existing section 47(xiiib) provides that no capital gains tax is payable on conversion of a private limited or unlisted public company into LLP subject to certain conditions. Proviso (e) states that this provision will not apply if the total sales, turnover or gross receipts in the business of any of the three preceeding years	<i>Many companies are now converting themselves to LLP. With a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail</i>



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Sr. No	Section	Issue/Justification	Suggestion
		exceed Rs. 60 lakhs. Since this was an amendment to facilitate conversion of private limited companies and unlisted companies into LLPs, ideally, there should be no restriction on the turnover to avail the benefit of section 47(xiiib). It may also be noted that the parent Act i.e. Limited Liability Partnership Act 2008, allows this conversion without any such restrictions.	<i>the benefit under section 47(xiiib) or alternatively, the limit of sixty Lacs rupees should be substantially enhanced or the condition of the turnover should be deleted.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
	(d) Extension of benefit of conversion to Sole Proprietary and Partnership Firms	Extending exemption from Capital Gains Tax for conversion to LLP by Partnership and Sole Proprietary Firms. Presently clause (xiiib) to section 47 of the Act provides for an exemption on levy of capital gains tax in the event of transfer of a capital assets or shares held by/in the private limited company or unlisted public company on conversion of such company to LLP on fulfillment of various conditions. However, such an exemption is not provided to Sole Proprietary and Partnership Firms intending to convert itself into LLP to achieve an organized and regulated entity structure whereby retaining the flexibility and minimizing the formalities.	<i>It is suggested that the benefit of exemption in respect to conversion to LLP may also be extended to Sole Proprietary and Partnership Firms intending to convert itself into LLP.</i>
	(e)Section 47(xiiib) - Conversion of company into LLP - Clarification required relating to	LLP is a preferred form of organisation for smooth conduct of business. Accordingly, section 47(xiiib) provides for an exemption enabling smooth conversion, subject to compliance with the conditions. There was a case for making the exemption more liberal by relaxing the turnover limit which	<i>1. In view of the aforesaid, it is suggested that the condition of asset base being less than Rs. 5 crores be rationalised.</i> <i>2. Also, the scope of the term 'value of total assets as appearing in the books of accounts' be clarified to</i>



Sr. No	Section	Issue/Justification	Suggestion
	additional condition	is one of the present conditions. However, conversion will become all the more difficult as a result of an additional condition which will deny exemption in a case where the company was possessed of total assets worth Rs. 5 crores in any of the 3 years. The expression "value of total assets appearing in the books of accounts" is not defined and may create certain interpretational issues such as whether status of assets is to be seen on balance sheet date or even one day's presence during the year will be considered if asset no longer exists with the assessee as on balance sheet date. Also, whether 'Miscellaneous Expense' as an item reflected on balance sheet will constitute an asset, treatment of advance tax paid shown on asset side (with corresponding provisions for tax on liability side), etc. are the other issues which need to be addressed.	<i>provide certainty and reduce litigation .</i>
63.	Business reorganizations Section 47(x)/(xa)	Presently, section 47(x)/(xa) clarifies that conversion of bonds/debentures (including FCCBs/FCEBs) into shares or debentures shall not be regarded as 'transfer' and hence shall not trigger capital gains. In absence of similar clarification, there is ambiguity when there is conversion of equity shares into preference	<i>In view of the aforesaid, it is suggested that Section 79 may be appropriately amended since abusive transactions of change in shareholding with a view to avoid or reduce tax liability shall be addressed by GAAR from 1st April, 2017.</i>



Sr. No	Section	Issue/Justification	Suggestion
		shares or conversion of one class of shares into another class of shares. Such conversions do not trigger any immediate cash flows for the investors. Section 79 denies carry forward of loss for closely held companies where there is change in shareholding beyond 50% from shareholding which prevailed in the year of loss. This provision is intended as anti-abuse provision to prevent business reorganizations with sole motive of benefit of tax losses. However, this provision acts as impediment in many bonafide circumstances like investment by PE investor in a start-up company or amalgamation or demerger of shareholder company or intra-group reorganization.	
64.	Sections. 47(x) & (xa) and 49(2A) - Capital Gain on Conversion of Foreign Currency Exchangeable Bonds (FCEB) and other Bonds & Debentures.	Section 47 (xa) read with Section 49(2A) effectively provide that conversion of FCEB in to shares of any company will not give rise to capital gain and for the purpose of computing capital gain arising on sale of such shares at subsequent stage, cost of acquisition shall be taken as the relevant part of cost of FCEB. There is no corresponding provision for taking holding period of the shares from the day of acquisition of the Bonds [FCEB]. Similar difficulty exists in case of conversion of debentures and other bonds in to shares for which also similar provision exists in Section 47(x).	<i>It is suggested that appropriate amendment should be made in Section 2(42A) to provide that holding period of such shares should be taken from the date of acquisition of FCEB/debentures/ other bonds and not from the date of allotment of shares.</i>



Sr. No	Section	Issue/Justification	Suggestion
65.	Conversion of One kind of share into another	At present, the conversion of one kind of share into another kind of share has a dichotomy in as far the period of holding and cost of acquisition is concerned. Section 55(2)(v) states that cost of acquisition of the converted shares received by an assessee would be the cost of the original shares from which these converted shares were derived. This seems to indicate that the original shares and the converted shares are similar and hence there is no transfer on such conversion. However, section 47 does not provide any exemption on such conversion other than conversion of preference shares into equity shares as per clause (xb). Additionally, section 2(42A)(f) states that the period of holding for the converted share shall be from the date of receipt of the converted share and not from the date of acquisition of the original share.	<i>It should be clarified as to whether such conversion is intended to be tax exempt, and if so, the relevant amendments in section 47 and section 2(42A) should be carried out.</i>
66.	Section 50C - Option for adopting stamp duty value on date of agreement – Amendment to be treated as	In relation to computing capital gains tax liability on transfer of land or building, amendment made via the Finance Act, 2016 gives an option for considering the stamp duty value as on date of agreement instead of stamp duty value on date of registration, subject to part or	<i>It is suggested that the amendment may be treated as clarificatory in nature since it conveys the real intent of law to ensure equity in tax treatment vis-à-vis section 43CA. Alternatively, a circular may be issued to achieve the same result in pending</i>



Sr. No	Section	Issue/Justification	Suggestion
	clarificatory in nature	whole of the consideration being received by way of account payee cheque or bank draft or ECS through bank account on or before the date of agreement. The said amendment in section 50C is in line with the similar provision already existing in section 43CA. This provision was, therefore, long due to be incorporated in section 50C. The incorporation of similar provision in section 50C has alleviated the genuine hardship faced by the taxpayers.	assessments or appeals.
67.	Section 50CA and section 56(2)(x)(c) - Fair Market Value to be full value of consideration in case of transfer of unquoted shares – Amendment required in view of double taxation in the hands of seller as well as buyer	The Finance Act 2017 inserted a new section 50CA to provide that in case of transfer of shares of a company other than quoted shares, the fair market value of such shares determined in the prescribed manner shall be deemed to be the full value of consideration for the purpose of computing income chargeable to tax as capital gains. Further, Explanation to the said section states that “quoted share” means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business. The Finance Act 2017 inserted new clause (x) in sub-section (2) of section 56 so as to provide that where any person receives immovable property without consideration and its stamp duty value exceeds Rs.50,000, the same would be subject to tax.	It is suggested that: • Keeping in mind the consequential double taxation arising on account of the same income being subject to tax both in the hands of seller and recipient, suitable amendment may be made to prevent unjust enrichment of the revenue. • The definition of quoted shares is very subjective and complicated. In actual practice, it may involve problems of interpretation, which would invite unending litigation. It is, therefore, suggested that this section should be made applicable to transfer of shares of a company in which the public is not



Sr. No	Section	Issue/Justification	Suggestion
		Likewise, if any person receives immovable property for inadequate consideration, and the difference between the stamp duty value and actual consideration exceeds Rs.50,000, the difference would be subject to tax in the hands of the recipient under the head "Income from other sources". Clause (x)(c) provides that where any person receives any property other than immovable property - □ Without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property shall be chargeable to tax as 'income from other sources'. □ For a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration shall be chargeable to tax as 'income from other sources'. In light of the aforesaid provision, there will be a double taxation of the same income on deeming basis as explained in the example below: Example:	<i>substantially interested.</i>



Sr. No	Section	Issue/Justification	Suggestion
		For example, 'X' transfers his unquoted shares purchased at a cost of Rs.8 lakhs to 'Y' at Rs. 10 lakhs whereas the Fair Market Value of the shares as determined in the prescribed manner is Rs. 1 crore. Then in this situation, the provisions of Section 50CA would be attracted in the hands of the seller, whose full value of consideration for computation of capital gains would be Rs.1 crore. Further, 'Y' who is purchaser would be liable to tax under section 56(2)(x)(c) on Rs. 90 lakhs (i.e. Rs. 1 crore less Rs. 10 lakhs) as income from other sources. Hence, the difference of Rs. 90 lakhs between the fair market value and the actual consideration will be taxable: □ under section 50CA, in the hands of seller; and □ under section 56(2)(x), in the hands of recipient. Further, even though the recipient, at the time of sale of such shares at a later date would treat the FMV as the Cost of Acquisition, tax has been collected upfront and at times it may happen that the person may not sell shares at a later date.	
68.	Section 50CA - Valuation of	In case, where the shares of a company are transferred in	<i>It is therefore suggested that in case where the shares of a</i>



Sr. No	Section	Issue/Justification	Suggestion
	shares of a company in distress	distressed condition, the rule 11UA/11UAA prescribing the method to determine the FMV would not provide the correct FMV of shares. The said Rules do not provide the method to value the shares of a company sold/transferred in distressed condition.	company are transferred in distressed condition, the FMV as determined by the merchant banker or an accountant as defined in Rule 11U shall be considered.
69.	Section 54 and 54F - Capital gains exemption in case of investment in ONE residential house property in INDIA	Section 54(1) has been amended by the Finance (No.2) Act, 2014 by substituting "constructed, a residential house", with "constructed, one residential house in India". Similar amendment is made in section 54F(1). Even though there is a positive intent to put to rest the controversy and the conflicting judgements on the meaning of 'a residential house', certain issues are still expected to continue. A doubt would still remain as to what constitutes one "RESIDENTIAL HOUSE" as most of the past litigations on Section 54(1) and 54F(1) is on this very issue. In <i>ITO vs. SushilaJhaveri</i> 292 ITR (AT) 1 (Mum)(SB), Hon'ble Special Bench of Mumbai ITAT held that where more than one unit is purchased which are adjacent to each other and are converted into one house for the purpose of residence by having	It is suggested that an explanation be inserted in the sections 54 and section 54F clarifying the intent with regard to meaning of one RESIDENTIAL HOUSE in the context of the aforesaid sections.



Sr. No	Section	Issue/Justification	Suggestion
		common passage, common kitchen, etc., then, it would be a case of investment in one residential house and consequently, the assessee would be entitled to exemption. The assessee making investment in two flats located at different localities in Mumbai will be entitled to exemption in respect of investment in one house only of her choice. It was further held that the expression "a residential house" in sections 54 and 54F means one residential house. <i>In Karnataka High Court in CIT v. D. AnandaBasappa [2009] 180 Taxman 4 the taxpayer transferred a residential building and invested the long-term capital gain in acquisition of two residential flats situated side by side by means of two separate registered sale deeds and claimed exemption for both the residential units acquired. Both the units were in the occupation of two different tenants. The Court held that the apartments were situated side by side and the builder had made necessary modifications to make them one unit by fixing opening door in between those two apartments. The mere fact that when the Inspector visited the premises they were occupied by two different tenants was not a ground to hold that the apartments were not one residential unit. The aspect of</i>	



Sr. No	Section	Issue/Justification	Suggestion
		one registered sale deed or more than one deed could not be determinative of the building being considered as one residential unit or otherwise. In the case of <i>CIT vs. Gita Duggal</i> [2013] 357 ITR 153 (Delhi), the Assessing officer disallowed the exemption in respect of one floor out of two floors constructed by the assessee through a developer since the floors were independent of each other and self-contained and therefore they cannot be considered as one unit of residence. Accordingly, he held that the assessee was not eligible for the exemption under Section 54. The Delhi High Court decided in favour of assessee on the ground that section 54/54F uses the expression "a residential house". The expression used is not "a residential unit". The Court felt that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under Section 54/54F since it is neither expressly nor by necessary implication prohibited. The above noted case laws clearly bring out the point on the confusion surrounding the definition of 'a residential	



Sr. No	Section	Issue/Justification	Suggestion
		house'. Even after the amendment made by the Finance (N.2) Act, 2014, doubts will persist as to what would constitute one RESIDENTIAL HOUSE.	
70.	Certification of deductions claimed under section 54, 54F, 54EC etc	a) At present deductions u/s 54, 54F, 54EC etc. are not subject to any audit or certification. The possibility that the assessee claims inaccurate amount of deduction under such provisions cannot be ruled out. In order to reduce such possibility of furnishing of inaccurate particulars by the assessee and further to reduce the burden of the Department in scrutinising such claims made by the assessee in his return, it is suggested that such provisions may be amended to require the assessee to obtain a certificate from an Accountant certifying the accuracy of the claim. Further, a ceiling may be created for deductions u/s 54, 54F, 54EC etc. that deduction amount in excess of Rs. 30 lakhs in aggregate may be certified by a Chartered Accountant.	<i>It is suggested that the assessee claiming deduction exceeding a specified amount under the provisions of section 54, 54F, 54EC etc may be required to obtain a certificate from a Chartered Accountant certifying the accuracy of the claim.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
71.	Section 54EC- Capital gains exemption on investment in Specified Bonds during the financial year	In furtherance of the existing proviso to section 54EC, a new proviso has been inserted to clarify that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets , during the financial year in which the original asset or assets are transferred and in the subsequent	a) Considering the fact that the new proviso takes care of the true intent of the law, and appears to be contrary to the existing proviso, thereby causing hardship to the genuine taxpayers, it is suggested that the act be amended to substitute the first proviso with the newly



Sr. No	Section	Issue/Justification	Suggestion
		financial year does not exceed fifty lakh rupees. The change is proposed to plug the revenue leakage and to clarify the real intent of the law. Since, the new proviso is in furtherance of the existing proviso; it may cause hardship in genuine cases where investment has to be made in long term specified asset in respect of two previous years in a single financial year. For example, an assessee selling a long term capital asset in February, 2015 (Previous year 2014-15) may invest in Section 54EC assets either in 2014-15 or 2015-16 (upto August,2015). However, in respect of any long term capital asset sold by him in the year 2015-16, he will not be able to invest in 54EC bonds since exemption will be available to him due to applicability of first proviso to section 54EC.	inserted proviso. <i>b) Considering the inflationary conditions in the economy, it is further suggested that the said limit of Rs.50 Lakhs may be raised to Rs. 1 crore.</i>
72.	Exemption u/s 54 not to be denied due to delay in completion of project beyond the control of assessee	With difficulties being faced by the Real Estate Sector business (due to delay in clearances, non-availability of finance and a sluggish demand) numerous projects are delayed in execution. As a result, an assessee who has sold a house and invested in another flat which is under construction by a builder /developer and is to be completed within the time limit prescribed u/s 54, is being denied exemption for no fault on his part.	<i>It is suggested that where substantial part of the consideration of the new flat has been paid, but completion of construction has been delayed for reasons beyond the control of the assessee; exemption u/s 54 may not be denied.</i> <i>Suitable safeguards to prevent misuse of such provision may be incorporated in the statute. However, hardship caused to</i>



Sr. No	Section	Issue/Justification	Suggestion
			<i>genuine home-buyers, should be alleviated.</i>
73.	Capital gain on transfer of residential property to be taxed in certain cases- Section 54GB	The Finance Act, 2012 had inserted a new section 54GB to exempt long-term capital gains on transfer of a residential property, being a house or a plot of land, owned by an individual or HUF, if the net consideration on sale of property, is invested in equity of a new start-up SME company in the manufacturing sector which is utilised by the company to purchase new plant and machinery. Since this section was introduced with a view to incentivise investment in the Small and Medium Enterprises (SME) in the manufacturing sector as per the National Manufacturing Policy announced by the Government in 2011, the benefit of exemption under section 54GB should not be restricted to capital gains from sale of residential house and plot of land alone, but should be extended to long term capital gains derived from other capital assets also. This exemption under section 54GB can be claimed subject to the following conditions. (i) The investee company should qualify as a Small or Medium SME under the Micro, Small and Medium Enterprises Act, 2006. (ii) The company should be engaged in the business of	<i>It is suggested:</i> a) <i>The benefit under section 54GB may be extended to long-term capital gains on sale of any capital asset which is invested in the equity of a new start-up SME company for purchase of new plant and machinery within the prescribed time.</i> b) <i>Investment in existing SME company may also be considered for the purpose of such exemption.</i> c) <i>Further, investment in LLP which satisfies the condition of SME enterprises may also be permitted, subject to conditions as may be necessary. Restrictive clauses may be inserted in line with the appropriate clauses of the proviso to section 47(xiiiib).</i> d) <i>The restricted time limit for acquiring new plant and machinery will create difficulties and, therefore, it is suggested that the SME company may be allowed to make such investment in new plant and machinery within a period of 2 years from the date on which the assessee makes the investment in its equity shares.</i> e) <i>The period of 5 years for retaining the equity shares may be reduced to 3 years, in</i>



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



Sr. No	Section	Issue/Justification	Suggestion
		Government. Thereafter, Central Government issued Notification No 44/2012, Dt 25-10-2012 in this regard. (vii) The above new plant and machinery acquired by the company cannot be sold for a period of 5 years. (viii) The above scheme of exemption granted in respect of capital gains on sale of residential property will remain in force up to 31.3.2017.	
74.	Reference to the Valuation Officer (Section 55A)	This section empowers the assessing officer to refer the matter to the valuation officer for the purposes of ascertaining the fair market value of the capital asset. Under clause (a), the power has been given to the valuation officer to refer the matter, where the value of the asset has been claimed by the assessee in accordance with the estimate made by the registered valuer and the assessing officer is of the opinion that the value is in variance with its fair market value. The variance has not been defined by the board and hence it is creating lot of difficulties to the assesses as even in case of minor variation, the matters are getting referred to the valuation officer. Further under clause (b), the assessing officer can refer the matter where he is of the opinion that the fair market value of the asset exceeds the value claimed	It is recommended that the meaning of variance under clause (a) be defined and given a reasonable tolerance limit. If the variance is within such limits, matter should not be referred to the valuation officer. Further it is also recommended that the limits prescribed under Rule 111AA be enhanced, percentage being 25% and value being Rs 10,00,000 so that substantial litigation on the reference to valuation officer will be reduced.



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		by the assessee by more than such percentage of the value of the asset or by more than such amount as may be prescribed. The above limit has been prescribed under Rule 111AA by IT (Fourth Amendment) Rules, 1972. The limit in percentage is 15% and in value is Rs 25,000. Looking at the situation today and the values of immovable properties, the limits defined are too less and needs a revision	



PART F-INCOME FROM OTHER SOURCES

DETAILED SUGGESTIONS

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



Sr. No	Section	Issue/Justification	Suggestion
		nephews. This may not be the legislative intent as they also form part of the close circle of relatives and accordingly have been considered as “relative” in the Direct Taxes Code Bill, 2010 and 2013.	
76.	Section 56(2)(ix) - Taxability of forfeited advance for transfer of a capital asset	Clause (ix) is inserted in section 56(2) by Finance (No. 2) Act, 2014 to provide for taxability of any sum received as an advance or otherwise in the course of negotiations for transfer of capital asset. Since it is a capital receipt it was earlier allowed as a deduction from the cost of acquisition under section 51. The same is now taxed as a revenue receipt in the year of receipt under the head “Income from other sources”. Making it taxable in the year of receipt is a good move and in the interest of the revenue. However, the other side of the same transaction also needs consideration i.e. from the payer’s point of view whose money has been forfeited. Since the receipt is deemed to be revenue due to the enactment, it follows that the expenses in the hands of the payer would also be revenue in nature. Consequently, corresponding benefit needs to be provided to the payer.	<i>It is suggested that a suitable amendment may be made in the Act which allows the benefit of deduction of forfeited amount to the payer of such amount.</i>



Sr. No	Section	Issue/Justification	Suggestion										
77.	Taxation on transfer of money/property without consideration or for inadequate consideration	The Finance Act, 2017 expanded the scope of section 56(2)(vii) and 56(2)(viia) by inserting a new clause (x) in sub-section (2) of section 56, so as to provide that receipt of the <u>sum of money or any property by any person</u>, without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of recipient under the head “Income from other sources”. It has also <u>widened the scope of existing exceptions</u> by including receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47 namely: <table><tr><th>Section reference</th><th>Particulars</th></tr><tr><td>Section 47(i)</td><td>In relation to distribution of capital assets on partition of HUF</td></tr><tr><td>Section 47(vi) / 47(via) / 47(vii)</td><td>In relation to transfer of capital asset in scheme of amalgamation</td></tr><tr><td>Section 47(viaa)</td><td>In relation to transfer in a scheme of amalgamation of banking company with banking institution</td></tr><tr><td>Section 47(vib)/</td><td>In relation to transfer of</td></tr></table>	Section reference	Particulars	Section 47(i)	In relation to distribution of capital assets on partition of HUF	Section 47(vi) / 47(via) / 47(vii)	In relation to transfer of capital asset in scheme of amalgamation	Section 47(viaa)	In relation to transfer in a scheme of amalgamation of banking company with banking institution	Section 47(vib)/	In relation to transfer of	An amendment should be made in proviso to clause (x) of sub-section (2) to section 56 of the Act, which provides exemption to certain assesses/ transactions/transfers from applicability of section 56(2)(x) to include ‘transaction not regarded as transfer under clause (iv) and clause (v) of section 47’ along with other transaction not regarded as transfer under clause [(i), (vi), (via), (viaa), (vib), (vic), (vica), (vich), (vid), (vii) of section 47)
Section reference	Particulars												
Section 47(i)	In relation to distribution of capital assets on partition of HUF												
Section 47(vi) / 47(via) / 47(vii)	In relation to transfer of capital asset in scheme of amalgamation												
Section 47(viaa)	In relation to transfer in a scheme of amalgamation of banking company with banking institution												
Section 47(vib)/	In relation to transfer of												



Sr. No	Section	Issue/Justification		Suggestion
		47(vic)/ 47(vid)	capital asset in demerger	
		Section 47(vica) / 47(vicb)	In relation to transfer of capital asset in business reorganization by a co- operative bank to successor co- operative bank	
		The below exempt transfers are currently not forming part of the exception to section 56(2)(x) of the Act: - As per provisions of section 47(iv) of the Act, <u>any transfer of capital asset by a company to its subsidiary company</u> is exempt from tax where - the parent company or its nominees holds the whole of the share capital of the subsidiary company; and - the subsidiary company is an Indian Company. - Similarly as per provisions of section 47(v) of the Act, any transfer of capital asset by subsidiary company to its holding company is exempt from tax where:		



Sr. No	Section	Issue/Justification	Suggestion
		(a) the whole of the share capital of the subsidiary company is held by the holding company; and (b) the holding company is an Indian Company. Akin to amalgamation/demerger such <i>inter-se</i> transfers between holding company and subsidiary company are typically undertaken with an intention of internal re-organization or to comply with some regulatory requirement [Example: Transfer of shares of group companies, by the promoter holding company to its subsidiary company (being a non-operative financial holding company which shall hold the Banking and other financial services entities) to comply with Banking Regulations for the purpose of Universal Bank Licence, which requires all the regulated financial service entities of the group to be held under a non-operative financial holding company structure]. However, while exemption from applicability of section 56(2)(x) has been provided to certain transfers [which are exempt transfers under section 47] in the nature of amalgamation/demerger/business reorganisations, no such exemption in section 56(2)(x) has been provided to transfer of capital asset by holding company to its subsidiary company and vice-a versa [which is also an exempt transfer under section 47(iv) and section 47(v) of the Act]. Consequently, such transfer of capital asset (including shares) by	



Sr. No	Section	Issue/Justification	Suggestion
		holding company to its subsidiary company or vice-a-versa, without consideration or for a consideration which is less than FMV⁵, by an amount exceeding Rs.50,000, would be subjected to tax as 'Income from other source' in the hands of the recipient. Thus, despite the fact that transfer of capital asset by holding company to Indian subsidiary company and subsidiary company to Indian parent is not regarded as 'transfer' under section 47(iv) and section 47(v) of the Act, the same would be subjected to tax in the hands of the recipient under the newly introduced section 56(2)(x) of the Act. This would defeat the whole purpose of providing exemption to such internal re-organisations under section 47(iv) and section 47(v) of the Act and would result in genuine hardship to the assessee. Further, the cost of acquisition of capital asset in the case of transfers covered within the provisions of section 47(iv) and section 47(v) [i.e. transfer of capital asset between holding company and subsidiary company], shall be the cost for which the previous owner acquired the property. Thus, there would be a inconsistency between the provisions of section 47(iv) and	

⁵Determined in accordance with Rule 11U/ 11UA of the Income-tax Rules, 1962



Sr. No	Section	Issue/Justification	Suggestion
		section 47(v) read with section 49 which stipulate transfer at cost versus section 56(2)(x) which stipulates transfer at fair market value. Accordingly, by bringing the aforesaid transactions under the ambit of section 56(2)(x) would not serve any meaningful purpose and would be contrary to the provisions of section 47(iv) and (v).	
78.	Section 56 - Insertion of new clause (x) in section 56(2) vide the Finance Act, 2017	The Finance Act, 2017 inserted a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". Further, the following are the concerns in respect of the aforesaid section: (i) The scope of section is widened, but at the same time, the limit of exemption of Rs. 50,000 fixed as back as in 2006, has not been increased considering the inflation and reduction in the value of money. (ii) Revival of Sick Companies are necessary and is in overall interest of the economy. Taxing the amount received by the sick companies may not be fair. Considering this, subvention granted by parent company to subsidiary company to recoup the financial losses or to improve the financial health of the	<i>It is suggested that:</i> <i>i. In order to avoid the unintended hardship to small taxpayer, the limit of exemption may be increased from Rs. 50,000 to Rs. 5 lakhs.</i> <i>ii. Suitable exception to carve out the case of subvention granted by parent company to subsidiary company from the purview of section 56(2)(x) may be provided.</i>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		company was considered as capital receipt.	



CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
79.	Restriction of set off of loss from House Property	The Finance Act 2017 introduced a new section 71(3A) to provide that with effect from financial year 2017-18, set-off of loss under the head "Income from house property" against any other head of income should be restricted upto Rs 2 lakh per year. In other words, amount of loss under the head "Income from house property" exceeding Rs 2 lakh will not be entitled to be set-off. This restriction affect thousands of taxpayers who have availed housing loan(s) in the past based on the provisions of the Act on set-off as it stood then. This also have an adverse impact on the real estate sector.	<i>The restriction should apply to loss arising on account of interest payable on loans availed after 31st March 2017.</i>
80.	Section 79 – carry forward and set-off of losses in certain cases	In a recent decision, the Karnataka High Court (in the case of AMCO Power Systems Ltd.) held that the term beneficial shareholding as used in section 79 would apply to the ultimate holding company as well, and not be restricted to the immediate shareholding.	<i>It is recommended that it be clarified that whether section 79 would apply only to a change of more than 51% in the immediate holding company, or whether it would also apply in the case of a change in the ultimate holding company.</i>
81.	Section 79- Carry forward and set off of loss in case of eligible start-ups - Condition to be further relaxed	The Finance Act, 2017 amended section 79 to provide that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested and being an eligible start-up as referred to in section 80-IAC of the Act, loss shall be carried forward and set	<i>It is, therefore, suggested that the condition of continuous holding of the promoters/investors (being persons holding shares in the year of loss) be relaxed. Inter-se transfers between such shareholders be permitted. Also, it should suffice that the group of promoters/investors</i>



Sr. No	Section	Issue/Justification	Suggestion
		off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred during the period of 7 years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year. The existing provisions provide for restrictions on carry forward of losses in case of substantial change in shareholding of the Indian company. As per the current provisions, shareholders of the company at the end of the financial year in which the loss was incurred must continue to own at least 51% of the shares in that company in the year in which such carry forward loss is to be set off; otherwise, the company loses the ability to carry forward such loss. The Government, in pursuance of the start-up action plan and facilitating ease of doing business, introduced a beneficial regime for start-up to carry forward and set off losses. It has been provided that as long as all the original shareholders of the Company at the end of the financial year in which the loss was incurred continue to be shareholders of such shares in the financial year in which the loss is to be set off, the benefit of	<i>hold upto 26% of the voting power in the year of set-off. In any case, the turnover condition for a company to be an 'eligible start up' may be omitted in Explanation (ii)(b) to section 80IAC.</i> <i>Also, the period for carry forward and set-off of losses can be extended based on period of gestation in the particular industry instead of initial period of 7 years.</i>



Sr. No	Section	Issue/Justification	Suggestion
		carry forward of loss would be available. Another issue is on account of turnover condition specified in Explanation (ii)(b) of section 80-IAC for a company to qualify as 'eligible start up'. The condition is that turnover of such company should not exceed Rs. 25 Crore anytime between F.Y. 2016-17 to F.Y. 2020-21. This condition also creates uncertainty for start ups in the matter of section 79 limitation as generally applicable to closely held companies i.e., whether the turnover limit has to be adhered to in the year of set-off as well. The condition of continuing to hold all shares appears to be applicable not only to the initial promoters but also all persons investing subsequently in the start up, which may cause genuine practical hardship. This may also be practically difficult for the start-up company to achieve since PE investors generally look at time frame of 3 to 5 years for exit at a higher price. The exit may happen either through secondary sale in subsequent round of PE funding or through IPO. Any such exit will trigger section 79 limitation for the start-up company.	



CHAPTER VIA

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME



**PART B-
DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS**

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
82.	Complexity of internal & external caps on deduction Section 80C	The working of overall deduction u/s. 80C is quite complex with several internal caps and overall cap to be computed with reference to other provisions. For instance, for children tuition fees, there is internal cap of Rs. 12,000 per child upto two children. For premium on life insurance policies, internal cap is 20% of sum assured and so on. Similarly, there is internal cap of Rs. 1,20,000 on eligible term deposits with banks. The overall cap of Rs. 1,50,000 applies jointly to s.80C, 80CCC (pension policies) and 80CCD (New Pension Scheme) The overall cap of Rs. 1,50,000 does not offer any meaningful benefit with multiple investments clubbed under one single provision. DTC 2013 had attempted to classify deduction into incentives for savings (provident fund, superannuation fund and life insurance policy) and other expenses under separate provisions with independent deductions.	<i>The deduction for different investments and expenditure should be simplified with separate provisions/sub-provisions for each investment with independent outer cap</i>
83.	Section 80C- annual interest accruing on	At present, Tax Saving FDR is allowed as deduction u/s 80C but its interest is taxable.	<i>It is suggested that in the case of cumulative deposits, the amount of annual interest accruing may be deemed to</i>



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Sr. No	Section	Issue/Justification	Suggestion
	cumulative deposits	It is pertinent to note that the deduction u/s 80C on reinvestment of interest on NSC is available.	<i>have been reinvested for the purpose of deduction under section 80C.</i>
84.	Section 80D – Mediclaim premium deduction	Currently, deduction of mediclaim premium is allowed in the year in which the payment has been made. There are many mediclaim policies available in the market for which a single premium is payable in year one but the policy cover is for more than one year. These policies are more economical compared to traditional yearly policies.	<i>Pro-rata deduction of single premium paid in year one should be allowed over the term of the policy. E.g. if the premium paid is Rs.42,000/- for a 3-year policy, Rs.14,000/- should be allowed each year starting from the year in which the payment has been made</i>
85.	Donations made of any sum exceeding ten thousand rupees in cash-sections 80G and 80GGA	Sub-section (5D) was inserted in section 80G and sub-section (2A) was inserted in section 80GGA to provide that no deduction shall be allowed under these sections in respect of donation of any sum exceeding Rs.10,000 unless such sum is paid by any mode other than cash. It is not clear from the language of these sub-sections as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or with respect to the aggregate contribution made by a person during a year to an institution or to all institutions covered under section 80G(2) or 80GGA(2).	<i>It may be clarified as to whether the limit of Rs.10,000 is applicable in respect of each individual contribution or aggregate contributions to an institution or to all institutions covered under section 80G(2) and section 80GGA(2), respectively</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



**PART C-
DEDUCTIONS IN RESPECT OF CERTAIN INCOMES**

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
86.	a) Section 80-IA – Unit-wise deduction should be allowed	Plain reading of section 80-IA gives the impression that deduction under section 80-IA is available 'unit wise'. But, nowadays, losses of other units are clubbed to deny deduction under section 80-IA of the Income-tax Act, 1961 on the reasoning that all units constitute one single business. Since total income from eligible business is loss, deduction under section 80-IA is disallowed (Even when loss of other unit has been set off against profit of non eligible business income). This practice is discretionary in nature. An assessee/company who is claiming deduction under section 80-IA from one unit cannot start another unit of similar business as the initial losses of new unit will get adjusted with the profits of old unit. However, if the new unit is started by another assessee/ company, old unit will not suffer any disallowance under section 80-IA. This put existing assessee/company into disadvantageous position vis-à-vis new assessee/company. Many Tribunal benches (Bangalore, Mumbai etc.) have already rejected this practice.	A specific clarification/provision should be made in section 80-IA itself to provide that deduction under section 80-IA is 'UNIT SPECIFIC'. For each unit deduction under section 80-IA should be separately calculated. (SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)
	b) Benefit u/s 80-IA shall be allowable to the resulting / amalgamated company in case of demerger / amalgamation	Section 80-IA of the Income-tax Act, 1961 provides exemption from income tax on infrastructure projects subject to specified conditions in order to encourage investment in these areas. Sub-section (12) provides that in case of demerger or amalgamation, the benefits to the undertaking under Section 80-IA will continue in the hands of the transferee company and will cease in the hands of the transferor company. However, as per sub-section (12A) inserted by the Finance Act, 2007 the benefits will cease,	The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated. (SUGGESTIONS



Sr. No	Section	Issue/Justification	Suggestion
		if there is a transfer in a scheme of amalgamation or demerger, on or after 1st April, 2007. The unfortunate result of this amendment is that neither the transferor nor the transferee company will enjoy the benefit of section 80-IA in case there is an amalgamation or demerger. The original position, under which the transferee company will enjoy the benefit in case of a demerger or amalgamation, needs to be reinstated based on the following reasons: (i) Incentives of this nature have been traditionally linked to a unit/undertaking/ investment, and not to an entity. It is logically so, because the objective is to incentivize an investment regardless of which entity houses that investment. (ii) Amalgamations or demergers are restricted forms of transfer which are also subject to (i) stringent guidelines as prescribed in the Income-tax Act, 1961 and (ii) Court supervision and approval. The benefits under 80IA used to be allowed in the hands of the transferee companies in such restricted forms of transfer. Such rationale remains valid even now and the benefits under Section 80-IA may therefore, continue to be available in the hands of the transferee, like in the past, prior to insertion of Sub-section (12A) by the Finance Act 2007. (iii) The benefits of this section, rightly, covers a long span of 15/20 years as infrastructure projects by nature take a long time to give economic returns corresponding to their risks. In such a long span of time, the dynamic and ever changing market place, especially in a growing economy like India, will necessitate a company to undergo many changes (amalgamation or demerger being some of these) in order to continue to operate efficiently. Removal of benefits	FOR RATIONALIZATI ON OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		like that of 80-IA would lead to economic inefficiencies by preventing necessary amalgamations or demergers. (iv) The amendment therefore is an undue constraint and may even defeat the original purpose of encouraging infrastructure projects (especially given the long span of time), which are necessary building blocks of our economy. The concept of an amalgamation or demerger deserving appropriate treatment is well recognized under the Income-tax Act, 1961 which rightly provides for several benefits for such transactions including exemption from capital gains tax. Further, fiscal benefits similar to 80-IA like those under Sections 80-IB, 80-IC or 10A of the Income-tax Act, 1961 continues to be available, rightly, even after any amalgamations or demergers, and these have not been deleted. Extending the timelines for some of these benefit years, in the Finance Act of 2011 clearly underscores and reiterates their importance.	
87.	Incentivizing investments in respect of agricultural infrastructure	There is an urgent need to invest heavily in building up of a viable and efficient infrastructure in the agriculture sector in India. This would necessitate building up of proper computerized infrastructural facilities and electronic highways for procurement, dissemination of best agricultural practices, weather information, storage practices etc. as well as offering the best possible price to the farmers. Also, this would result in cutting down intermediaries/ middlemen and thereby reduce the transaction costs. Section 80-IA of the Income-tax Act, 1961 provides for deduction in respect of profits/ gains from industrial undertakings engaged in infrastructure development. This covers road,	<i>The tax incentives may take the following forms:</i> <i>(i) deduction of proportionate profits for the total value of turnover arising from such computerized infrastructural facilities (in line with the provisions of</i>



Sr. No	Section	Issue/Justification	Suggestion
		bridge or rail, highway projects, water projects, ports, airports, telecommunication services, industrial parks and power generation. The definition of infrastructure should be extended to include rural infrastructure like: - Village kiosks housing Information Technology infrastructure like computers, VSATs, Modems, smart cards, projectors, screens etc. - Support infrastructure like solar-panels, UPS, Batteries etc. at these locations. - Water harvesting facilities like check dams, wells ponds and other rain harvesting structures. - Storages including farmer facility center housing training centers, cafeteria, health clinic, pharmacy, bank counters and necessary parking area. - Green houses and poly houses.	section 80-IA read in conjunction with section 80HHC) for purposes of simplification and avoidance of disputes. (ii) deduction of the total expenditure incurred, both capital and revenue, for creating such infrastructure (similar to the provisions of section 35). (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
88.	Affordable Housing [Sec. 80-IBA(2)(h)]	This clause (h) prescribes a condition towards utilisation of Floor Area Ratio (FAR) to be 90% in case of four metros and 80% in other places. It is a factual position in the industry that there are two types of constructions. One is a high-rise/multi-storied buildings equipped with lifts and other structural specifications. Another is simple structure with Ground+3 or Ground+4 structures. In case of latter types of projects which are not multi-storied but low- rise buildings, it is practically not possible to achieve FAR of 80%. And most of the affordable housing comes under low rise buildings because of	Thus in such projects the condition of 80% need to be revised to 60% of FAR.



Sr. No	Section	Issue/Justification	Suggestion
		cheaper and faster construction. All these low rise projects will never be able to fulfil the condition of 80% FAR utilisation.	
89.	Section 80-IBA – Relaxation of certain conditions from 1.4.2018 – Relaxation may be effective from 1.4.2017	Under section 80-IBA, inserted by the Finance Act, 2016 from 1.4.2017, deduction of 100% of profits derived from development of affordable housing projects approved on or after 1st June 2016 is available, subject to fulfilment of specified conditions. The Finance Act, 2017 has made amendments in section 80-IBA so as to relax some of the conditions required to be fulfilled for grant of deduction. These amendments provide for: (i) Extending period within which housing project is to be completed to five years from the date of approval; (ii) Substituting references to “built-up area” with “carpet area” as defined in the Real Estate (Regulation and Development) Act, 2016; (iii) Housing project located in the outskirts of metro cities (i.e. located within 25 KM periphery of municipal limits of metro cities), which were earlier required to comply with conditions applicable for housing project located in metro cities, now need to comply with less restrictive conditions as applicable to housing project located in any other place in India. The above amendments are welcome and are likely to give a boost to affordable housing in India. However, while section 80-IBA was introduced vide Finance Act, 2016 and is effective from A.Y. 2017-18 for housing projects that are approved on or after 1st June 2016, the above amendments vide Finance Act, 2017 are being made effective only from A.Y. 2018-19. Therefore, there is scope for litigation on the issue as to whether amended provisions will apply to projects which are approved on or after date of amendment being 1 April 2017 or also to projects approved between 1 June 2016 and 31 March 2017.	It is suggested that – (i) To avoid possible litigation as also to ensure that housing projects approved prior to 1 April 2017 are treated on par with housing projects approved on or after 1 April 2017, the amendments made in the Finance Act 2017 relaxing the conditions to be fulfilled under 80-IBA for availing the benefit of deduction thereunder may be introduced with retrospective effect from the date of insertion of the section i.e. from A.Y. 2017-18. (ii) Alternatively, CBDT may issue



Sr. No	Section	Issue/Justification	Suggestion
			a clarification that housing projects approved prior to A.Y. 2018-19 in respect of which profits are earned during or after A.Y. 2018-19 will be considered for tax holiday benefit as per the amended provisions.
90.	Section 80U – Consequential amendments required due to the enactment of ‘The Rights of Persons with Disabilities Act, 2016’ w.e.f. 28.12.2016	Section 80U, <i>inter alia</i>, provide for a deduction to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability. As per Explanation to the said section, certain terms like "disability", "medical authority", "person with disability" and "person with severe disability" have been defined w.r.t. to provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, the said Act has been repealed w.e.f. 28.12.2016 with the enactment of the ‘The Rights of Persons with Disabilities Act, 2016’. Accordingly, section 80U needs amendment in consonance with the new Act. Some of the salient features of the new law are: - Disability has been defined based on an evolving and dynamic concept. - The types of disabilities have been increased from existing 7 to 21 and the Central Government will have the power to add more types of disabilities.	<i>It is suggested that section 80U may be suitably amended so as appropriately incorporate the provisions of the newly enacted law i.e. ‘The Rights of Persons with Disabilities Act, 2016’ repealing the law ‘the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995’ w.e.f. 28.12.2016 as referred in existing section 80U.</i>



PART CA-

DEDUCTIONS IN RESPECT OF OTHER INCOME

DETAILED SUGGESTIONS

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



CHAPTER IX

DOUBLE TAXATION RELIEF



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
92.	Applicability of Education Cess and Secondary and Higher Education Cess -Double Taxation Avoidance Agreement	Under the Income-tax Act, 1961, Education cess and Secondary and Higher education cess are imposed on account of the provisions contained in sub-section (12) of Chapter III of the Annual Finance Act which provides the rates of income-tax. The education cess is to be calculated on the amount of income-tax as specified in sub-sections (1) to (10) of the said Chapter. However, none of these sub-sections deal with the rate specified in DTAA, which becomes leviable by virtue of the provisions of section 90A(2). Therefore, the moot issue is whether the Education cess and Secondary and Higher education cess would be applicable where the rates specified in the respective DTAA becomes applicable by virtue of the beneficial provisions contained in section 90A(2). It may be noted that at the time when a Double taxation avoidance agreement is entered, the intention is to arrive at an all inclusive fixed rate of tax.	<i>Appropriate amendment in the Act as well as ITR forms may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.</i> (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
93.	Agreement with foreign countries or specified territories Section 90-Tax treaties vis-a-vis the Act	Section 90(2A) of the Act provides that notwithstanding anything contained in Section 90(2) of the Act, the provisions of Chapter X-A i.e. GAAR shall apply to the taxpayer even if such provisions are not beneficial to the taxpayer.	<i>Given the resultant implications on the non-resident taxpayers and the same being against the internationally accepted principles, sub-section should be withdrawn.</i>



		Insertion of this provision would nullify the international principle on 'treaty overriding domestic tax laws'. A tax treaty is a bilateral agreement entered between two sovereign governments. As per Article 26 and 31 of the Vienna Convention, a tax treaty should be implemented in good faith. Further as per Article 27 of the Vienna Convention, a government cannot invoke its internal law as a justification for its failure to perform the tax treaty. Therefore, a unilateral amendment in the domestic law of any particular country cannot override a tax treaty which has been signed with full knowledge, understanding and consent of both of the governments.	
94.	Sections 90 & 90A – Clarification with regard to interpretation of 'terms' used in tax treaties under Section 90/90A but not defined in such treaties - Concern to be addressed	Under the existing provisions of Section 90 of the Act, power has been conferred upon the Central Government to enter into a tax treaty with the Government of any country outside India for granting relief in respect of income on which income-tax has been paid both under the said Act and Income-tax Act in that foreign country, avoidance of double taxation of income, exchange of information for the prevention of evasion or avoidance of income-tax or recovery of income-tax. Similar provisions are provided in section 90A of the Act in the case of a treaty entered into by any specified association in India with any specified association in the specified territory outside India.	<i>It may therefore be suggested to withdraw the proposed amendments to Section 90 and 90A of the Act.</i> <i>Without prejudice to the above suggestion, the proposed amendment should be restricted to the terms defined under the Act and should not apply to 'Explanation to be issued by the Government'. In other words, reference to the 'Explanation to be issued by the Government' should be removed.</i>



		It is further provided in section 90 and 90A of the Act that any 'term' used but not defined in this Act or in the tax treaty referred to in sub-section (1) of respective sections shall have the meaning assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf, unless the context otherwise requires, provided the same is not inconsistent with the provisions of this Act or the agreement. The Finance Act 2017 amended sections 90 and 90A of the Act, to provide that where any 'term' used in an agreement entered into under sub-section (1) of Section 90 and 90A of the Act, is defined under the said agreement, the said term shall be assigned the meaning as provided in the said agreement and where the term is not defined in the agreement, but is defined in the Act, it shall be assigned the meaning as per definition in the Act or any explanation issued by the Central Government. A tax treaty is a bilateral agreement entered between two countries based on mutual negotiations by executives of respective countries. As per Article 31 of the Vienna Convention, a treaty shall be interpreted in good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose.	



		In view of above, the Government cannot unilaterally introduce an amendment in the Act which would override a bilateral tax treaty. In several cases, the courts have also held the same. Article 3(2) of the Indian tax treaties provides that if any term which has not been defined under the tax treaty, unless the context otherwise requires, the meaning defined under the Act shall apply. Therefore, the tax treaties already provide a mechanism in such a situation.	



CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
95.	Country by Country Reporting - Penalty for non-furnishing of Country by Country report	Section 271GB of the Act prescribes stringent penalty for non-furnishing of Country by Country (CbyC) report as prescribed in section 286 by the due date. The deadline for filing the CbyC report in India is 30 November 2017 for first covered FY 2016-17 i.e. only 8 months post the end of FY 2016-17 have been provided to the taxpayers to prepare and furnish the CbyC report.	<i>There is a need to rationalise penalty for the filing requirements in the first year atleast as even OECD's guidelines under BEPS Action Plan 13 provide for a 12 month period in the first year of filing. Accordingly, partial relief from the stringent penalties should be provided for the first year of CbyC report filing, such that penalty is applicable for CbyC report filed on or after 1 April 2018.</i>
96.	Threshold limit of INR 20 crore for applicability of transfer pricing provision	The existing provisions under Section 92BA of the Income-tax Act, 1961, require an assessee to comply with the transfer pricing provisions if the aggregate of the Specified Domestic Transactions exceeds INR 20 crore during an assessment year. A small assessee is required to comply with the transfer pricing provisions, leading to increase in the compliance burden and cost.	<i>It is therefore recommended that, the threshold limit of INR 20 crores needs to be revised upwards, preferably up to INR 50 crores providing relief to the small assessee. The above proposed amendment will also provide a boost to the ease of doing business initiative of the government, as it will reduce compliance burden and cost of the assessee.</i>
97.	Reporting of issuance of Share Capital Transaction in Form 3CEB	Clause 16 of the Form 3CEB requires the reporting of particulars in respect of the purchase or sale of marketable securities, issue and buyback of equity share, optionally convertible/ partially convertible/	<i>In view of Vodafone India Services Pvt. Ltd. vs. UOI (Dated – 10th October 2014)” and PIB dated 28th January 2015 issued by CBDT, it is suggested</i>



Sr. No	Section	Issue/Justification	Suggestion
		compulsorily convertible debentures/ preference shares. Bombay High Court in the case of “Vodafone India Services Pvt. Ltd. vs. UOI (Dated – 10th October 2014)” has held that Chapter X of the Income Tax Act 1961 i.e. Transfer Pricing Provision does not apply on any transaction involving issue/receipt of share capital money (including issued on premium) as no income/expense will arise from such transaction. Government of India in its PIB dated 28th January 2015, has accepted the order of Bombay High Court in the case of Vodafone and came to the view that the transaction involved is on capital account and there is no income to be chargeable to tax. So, applying any pricing formula is irrelevant. However even after the acceptance of the Bombay High Court Judgment by Government of India, Share Capital transaction is still required to be reported /justified in Form 3CEB.	that clause 16 of Form No. 3CEB should be amended so as clarify that share Capital transaction is not required to be reported /justified in Form 3CEB.
98.	Computing Profit Level Indicators (PLIs)	The three most important aspects of application of TNMM are 1) selection of the tested party – usually the simpler of the two related parties involved with the intercompany transactions; 2) selection of the profit level indicator (PLI); and 3) selection of the comparables.	It is suggested that Profit level indicators be clearly defined so as to avoid adoption of different approaches by the taxpayer and the Department leading to increased litigation.



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Sr. No	Section	Issue/Justification	Suggestion
		PLIs are ratios between the operating profits and operating costs / operating revenue /capital employed. It provides a sound basis to match operating profits of the company with that of the unrelated companies. The issue emerging out of this pertains to categorizing of expenses/incomes as operating/non-operating while calculating the PLIs. Since these terms are not being defined in the Indian TP Regulations, both taxpayers and tax authorities take different approaches to compute PLI	
99.	Advertising Marketing & Promotion Expenses (AMP)	From last many years, companies advertising foreign brands in India are been scrutinized in TP audits, for the AMP expenditure made by them. On this issue large TP adjustments are been made. This has led to litigation between the companies and TPOs resulting in the disallowance all marketing expense and the same is been challenged in higher authorities. Still after several cases been disposed by the High Court and the Appellate Tribunals, there is no clear resolution to this issue and it is still one of the most litigated TP issues before the courts.	<i>It is suggested that clarifications be issued in respect of AMP expenditure made by companies advertising foreign brands in India so that litigation can be avoided</i>
100.	Clarification to prevent erosion of Indian tax base through	There are many cases where Indian taxpayers may receive loans, services or licenses of intangibles from their overseas associated enterprises (AEs), with respect to which, the	<i>Considering the above, we request you to clarify either by making necessary amendments in the provisions of</i>



Sr. No	Section	Issue/Justification	Suggestion
	Transfer Pricing adjustments in hands of Foreign Companies	overseas AEs may decide either not to charge any consideration; or charge moderate consideration, which may otherwise be less than the market driven or arm's length price (ALP). Any receipt of interest, fees or royalty on such loans, services and licenses respectively, would attract income tax in the hands of the overseas AEs in India @ 10% under Indian domestic tax laws and/ or tax treaties, where the overseas AEs do not have permanent establishments in India. On the other hand, any payment of such consideration would obtain tax breaks in the hands of the Indian taxpayers @ 30%, through deduction or allowance while computing business profits. Thus, in other words, the Indian taxpayers, either by not paying any such consideration; or paying any consideration less than the arm's length price, the Indian exchequer would have only benefitted in the form of tax savings @ 20% thereof. This is generally referred to as the "base erosion" theory or concept. In the background of identical facts, a TP adjustment was made by the Indian Revenue in the hands of a foreign company in the case of <i>Instrumentarium Corporation Ltd v ADIT [2016] 49 ITR(T) 589 (Kolkata - Trib)</i>, by disregarding the concept of "base erosion". The TP adjustment ultimately reached the Hon'ble Income Tax Appellate Tribunal (the Tribunal) for resolution. Being a matter having nationwide ramification, the erstwhile	section 92 of the Act; or by issuance of a circular, ideally being the latter, to prevent the unintended application of the TP provisions of India in the manner, as aforesaid; and also obviate the hardship faced by foreign companies in India.



Sr. No	Section	Issue/Justification	Suggestion
		Hon'ble President of the Tribunal had constituted a Special Bench of the Tribunal in Kolkata in 2009 for deciding the matter. The case was finally heard and disposed of by the Special Bench of the Tribunal in the month of July, 2016, by dealing with the matters arising in the hands of the aforesaid assessee and another intervener. The Special Bench had decided the issue in favour of the Revenue, by disregarding the concept of "base erosion". Incidentally, while doing so, the Special Bench had seemingly misinterpreted the provisions of section 92(3) of the Income-tax Act, 1961 (the Act) read with Circular No. 14 of 2001 issued by the Central Board of Direct Taxes (CBDT) in the year 2001 to explain the newly introduced provisions of TP (Circular). Section 92(3) of the Act reads as under (inserted the context, wherever required): <i>"The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or sub-section (2A) (all these sub-sections provides for determination of value of</i>	



Sr. No	Section	Issue/Justification	Suggestion
		international transaction at arm's length price), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into." Though it is not very explicitly coming out from the above mentioned provisions of section 92(3) of the Act, the Central Board of Direct Taxes (CBDT) at paragraph 55.5 of the said Circular explained as under: "The new provision is intended to ensure that profits taxable in India are not understated (or losses are not overstated) by declaring lower receipts or higher outgoings than those which would have been declared by persons entering into similar transactions with unrelated parties in the same or similar circumstances. The basic intention underlying the new transfer pricing regulations is to prevent shifting out of profits by manipulating prices charged or paid in international transactions, thereby eroding the country's tax base. <u>The new section 92 is, therefore, not intended to be applied in cases where</u>	



Sr. No	Section	Issue/Justification	Suggestion
		<u>the adoption of the arm's length price determined under the regulation would result in a decrease in the overall tax incidence in India in respect of the parties involved in the international transactions."</u> The Revenue Officers and the Special Bench of the Tribunal have actually applied TP provisions in a reverse manner, which again, defeats the whole purpose of introducing TP. You may note that the concept of "base erosion", under identical circumstances, has been approved by the Australian Tax Office (ATO) vide one of its rulings, being equivalent to circulars issued by the CBDT. However, the Special Bench of the Tribunal had refused to be persuaded by the ruling of the ATO on grounds, not appealing to logic. The main logic applied by the Special Bench of the Tribunal in taking the aforesaid view, is that since the Indian TP regulations do not contain the provisions of compensatory downward adjustment in the hands of the paying company upon a TP adjustment being made in the hands of the payee company, by virtue of the restrictions contained in section 92(3) of the Income-tax Act, 1961 (Act) as in the aforesaid cases, the concept of "base erosion" could not be applied in the context of Indian TP provisions. The aforesaid ruling of the Special Bench of the Tribunal is likely to have far reaching negative tax consequences in the hands of several foreign companies in India, who might not have charged either any consideration of the above nature; or	



Sr. No	Section	Issue/Justification	Suggestion
		charged less than arm's length consideration, from their Indian AEs, under a bona fide and correct belief that by not charging such consideration, the Indian exchequer was not getting impacted in any way, being the very object of introducing TP regulations in India. Further, if the said interpretation of the Special Bench of the Tribunal is to be accepted, then all foreign companies would, most likely, start charging interests, royalties and fees from their Indian AEs, even under situations, where, for various commercial reasons, they would not have charged so, as a result of which, the Government exchequer would be actually losing to the extent of 20% of all such charges, in the form of income tax, being a reverse form of "base erosion", which one finds difficult to comprehend. This will significantly erode the tax base of India, which perhaps could be only the country in the world to be applying the provisions of TP to its disadvantage. In the case of <i>Cummins Inc. v. ADIT [2016] 73 taxmann.com 207 (Pune)</i>, the assessee had provided services to the Indian entities and had received charges in respect of desktop/laptop software licence and internet mail and had determined the value of transactions by allocating cost based on cost estimates. However, the TPO did not accept the same and made the adjustment. The Pune Tribunal held that where the assessee is a foreign company and is a recipient of internet mail charges and desktop /laptop service charges from the Indian	



Sr. No	Section	Issue/Justification	Suggestion
		entities and in case the assessee have to charge higher amounts from the Indian entities, then the same would result in reduction of overall tax base of India. In such circumstances, the Indian Transfer Pricing provisions are not to be applied. The Pune Tribunal observed that during the subsequent Assessment Years, the DRP and the AO have not made any similar adjustment in the hands of assessee on account of internet mail service charges and desktop/laptop service charges though identical international transactions were carried out in those years. The said intention of the TP provisions is also clear from the introduction of section 92CE providing for secondary adjustment vide Finance Act, 2017 wherein it is provided that “<i>where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.</i>” The above clearly demonstrates that intention of the TP provisions is to bring back excess money eroded from India rather than allowing foreign companies to take excess money out of India. If upward TP adjustment in the hands of the foreign company is sustained, as per the provisions of	



Sr. No	Section	Issue/Justification	Suggestion
		section 92CE, foreign company is required to bring money, however, since they have earned this income they will be required to remit this money out of India, this will create an absurd situation, not intended by the law.	
101.	Valuation under Customs and Transfer Pricing	Both Customs and TP require taxpayer to establish arm's length principle with respect to transactions between related parties. Objective under respective laws is to provide safeguard measures to ensure that taxable values (whether it is import value of goods or reported tax profits) are the correct values on which respective taxes are levied. The above objective, while established on a common platform has diverse end-results as seen below: - To increase Customs duty amounts, the Customs Cell (General Agreement on Tariffs and Trade Valuation) would prefer to increase the import value of goods - To increase taxable income, the Revenue Authorities would prefer to reduce import price of goods The diverse end-results create ambiguity in the manner in which the taxpayer should report values under the Customs and the Transfer Pricing. Further, even the judicial decisions on the issue do not give a clear precedence or guidance for the appropriate approach to be adopted by the taxpayer.	<i>There is a need for a common platform that would provide a 'middle-path' of ALP that is equally acceptable under Customs Law and under the Transfer Pricing.</i>



Sr. No	Section	Issue/Justification	Suggestion
		Further, various contradicting Tribunal decisions necessitate a greater need for convergence of transfer pricing mechanism under the Act and the Customs Regulations.	
102.	Section 92CE- Introduction of secondary adjustment	The Finance Act, 2017 introduced the concept of secondary adjustment on Transfer Pricing (TP) adjustments. A taxpayer is required to make a secondary adjustment, where the primary adjustment to transfer price has been made in the following situations:- • Suo moto by the taxpayer in the return of income; • By the AO during assessment proceedings, and has been accepted by the taxpayer; • Adjustment determined by an Advance Pricing Agreement (APA) entered into by the taxpayer; • Adjustment made as per the safe harbour rules under section 92CB; or • Adjustment arising as a result of resolution of an assessment by way of the mutual agreement procedure (MAP) under an agreement entered into under section 90 or section 90A for avoidance of double taxation. Further, the section 92CE(3)(v) defines 'Secondary adjustment' as an adjustment in the books of account of the assessee and its associated enterprise to reflect that	



Sr. No	Section	Issue/Justification	Suggestion
		the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. The additional amount receivable from the AE as a result of the primary adjustment should be repatriated by the taxpayer into India within a prescribed time limit. If the same is not received by the taxpayer within the time-limit, then the primary adjustment will be deemed as an advance extended to the overseas AE and a secondary adjustment in the form of notional interest on the outstanding amount should also be offered to tax as an income of the taxpayer. The above requirements for repatriating the adjustment amount into India and imputing a notional interest are triggered if the TP or primary adjustment exceeds rupees one crore. The manner of computation of interest on the amount deemed as advance made by the taxpayer to the AE would be prescribed. The situation of excess payment treated as loan given to AE on which notional interest is computed and added to the income of the	



Sr. No	Section	Issue/Justification	Suggestion
		assessee till the excess amount is repatriated by AE. It would be difficult for AE to repatriate the money to India on account of secondary adjustment as the income-tax laws and any other relevant laws pertaining to such country may not allow to repatriate money. Further the AE would have paid tax on such amount in its home country. This would lead to double taxation. This would lead to double taxation. Further, the same cannot be treated as advance in the books of account maintained in India as the books of account are prepared as per the provisions of Companies Act, 2013 read with Indian Accounting Standards. (i) Sub-section (1) of the proposed section 92CE provides for secondary adjustments to be made in respect of primary adjustments in certain situations. The phrase “secondary adjustment” has been defined in Clause (v) of Sub-section (3) to mean an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price as determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. Sub-section (2) lays down the	<i>Sub-sections (1), (2) and (3) need to be revisited to streamline and appropriately link up the three sub-sections to provide adequate clarity as to the specific requirements from the taxpayers on this front.</i>



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Sr. No	Section	Issue/Justification	Suggestion
		requirement for excess monies to be repatriated to India and for interest to be levied thereon, if not repatriated within the prescribed time. However, Sub-section (2) does not refer to 'secondary adjustment' as envisaged under Sub-section (1) and defined in Clause (v) of Sub-section (3). The absence of references to Sub-section (1) and/or 'secondary adjustment' in Sub-section (2) results in an apparent disconnect between Sub-sections (1) and (2) which may have unintended consequences.	
	(ii)	In respect of Unilateral APAs that have been entered till date, there was no provision relating to secondary adjustments in the statute. As a result, APAs have been concluded wherein terms that are not consistent with the Section 92CE have been imposed on taxpayers. In view of a specific provision having been introduced, taxpayers should be entitled to follow the mandate of Section 92CE in respect of APAs signed till date.	<i>A specific clarification should be issued under the APA Rules as well as in Section 92CE that the consequences for a delay in bringing money into India pursuant to a unilateral APA would be only under Section 92CE(2) and the APA would not be disqualified merely on this account.</i>
	(iii)	For better clarity and in order to avoid any confusion regarding the assessment year from which the secondary adjustment provisions would be applicable, it may be clarified that the section will be applicable from AY 2018-19, in relation to primary adjustments for fiscal years 2016-17 and thereafter.	<i>The Government may issue a clarification that section 92CE will be applicable from A.Y.2018-19, in relation to primary adjustments for fiscal years 2016-17 and thereafter.</i>
	(iv)	Clause (ii) to sub-section (1) of the section 92CE provides that a	<i>Government should clarify the term 'has been</i>



Sr. No	Section	Issue/Justification	Suggestion
		taxpayer is required to make a secondary adjustment where primary adjustment to transfer price has been made by the AO during assessment proceedings, and has been accepted by the taxpayer. There is lack of clarity on what exactly the term 'has been accepted by the taxpayer' means.	<i>accepted by the taxpayer' in order to provide certainty on the applicability of these provisions in such situations. For e.g. if the taxpayer is in appeal against the assessment order to Tribunal, in such cases, will secondary adjustment provisions be applicable only after the Tribunal proceedings are completed or the same will be applicable after Court proceedings are completed i.e. if the taxpayer further appeals to High Court/ Supreme Court.</i>
	(v)	Since adjustments are made subsequently when returns are taken up for scrutiny, any requirement to make secondary adjustment would depend upon whether the Associated Enterprise is willing to accept the secondary adjustments to be made in its books abroad. Non-acceptance of the same will lead to inter-company issues during consolidation. It could also require restatement of financial statements of an Indian entity if adjustments are material. This in turn might lead to filing of revised returns. Implication on shareholders value and lenders agreement (where there are borrowings) would need to be evaluated besides implications under the Companies Act, 2013. Further, FEMA requires money to be remitted within 6 months from	<i>The said issues may be considered and appropriate remedial measures may be incorporated to avoid genuine hardship.</i>



Sr. No	Section	Issue/Justification	Suggestion
		the end of the accounting year. Also, if the Associated Enterprise (AE) located abroad does not pass entries in the books, inter-company adjustments/eliminations could be a challenge if the AE is a holding company.	
	(vi)	The proviso to the section 92CE(1) states that nothing contained in this section shall apply, if;- (i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and (ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016. From a bare reading of the section, it appears that both conditions i.e. primary adjustment made before 1.4.2016 and it being less than 1 crore need to be complied, because the word "AND" is written between two conditions. It ought to be "OR". Else, in future years, there will be no threshold limit for secondary adjustment.	<i>It is suggested that the proviso may be restated as under:</i> (i) <i>the amount of primary adjustment made in any previous year does not exceed one crore rupees; and OR</i> (ii) <i>the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.</i>
	(vii)	Applicability of section 92CE has to be restricted only to cases satisfying the base erosion test. The provisions, as presently worded, may give rise to an interpretation that even where the primary adjustment is made in the hands of non-resident, secondary adjustment follows. As a	<i>In order to remove this anomaly it is recommended that section 92CE(2) be amended to clarify that the section applies only in case where the primary adjustment is made in the hands of the Indian AE.</i>



Sr. No	Section	Issue/Justification	Suggestion
		consequence, it may be interpreted as allowing repatriation of funds outside India, which may not be permitted even in terms of FEMA/ RBI regulations.	
	(viii)	Section 92CE provides for secondary adjustment in case where excess money (difference between transaction price and arm's length price), which remains outside India, due to the primary adjustment under TP is not repatriated to India. Taxable funds may remain outside India only in case where a foreign party is involved. In other words, there may be possible base erosion only in case where one of the parties to the transaction is foreign AE. A transaction between two domestic entities, will not lead to profits allocable to India, remaining outside India.	<i>In order to avoid any unwarranted litigation, it may be clarified that section 92CE applies only to international transaction and not domestic transactions as covered under section 92BA.</i>
	(ix)	Section 92CE deems the difference between the transaction price and arm's length price as an advance (which is to be recorded in the books) and provides for imputation of interest on such advances. However, there is no specific provision to reverse the advances appearing in the books even in case where the AE relationship ceases to exist or in case where the excess money is repatriated.	<i>It may be specifically provided that the advances appearing in the books of the parties be reversed in following cases where AE relationship ceases to exist or excess money is repatriated.</i>
103.	Rollback of APA	The CBDT introduced the rollback rules under the APA program on 14 March 2015. There were some ambiguities about the implementation of the rollback	<i>It is recommended that this provision should be relaxed to the extent that the taxpayers with similar transactions with no</i>



Sr. No	Section	Issue/Justification	Suggestion
		rules, and therefore, CBDT issued Frequently Asked Questions (FAQs) clarifying certain issues. In this regard, some of the aspects that need to be further addressed are as under: The international transaction proposed to be covered under the rollback is to be the same as covered under the main APA. The term 'same international transaction' implies that the transaction in the rollback year has to be of the same nature and undertaken with the same AEs, as proposed to be undertaken in the future years and in respect of which APA has been reached.	substantial changes in the functional, asset and risk profile should be allowed to take benefit of this provision. Further, if the same/ similar transaction is undertaken with another AE, the benefit of rollback should be provided. Thus, it is recommended that the provision should be made applicable to similar nature of transactions and with different AEs. Further, the rules provide that if the applicant does not carry out any actions prescribed for any of the rollback years, the entire APA shall be cancelled. It is recommended that this provision should be relaxed and should not result in the cancellation of the entire APA.
104.	Dispute resolution	The Indian APA authorities have been refusing to accept applications for bilateral APAs from countries like Germany, France, Singapore and Italy as the Double Taxation Avoidance Convention (DTAC) of India with these countries do not contain Article 9(2) which provides for corresponding adjustment to be allowed to the taxpayer for any economic double taxation that arises on account of transfer pricing adjustments. The OECD	India may introduce a clarification, giving effect to the point 2 above, to enable taxpayers from the countries like Germany, France, Singapore and Italy to file for bilateral APAs.



Sr. No	Section	Issue/Justification	Suggestion
		has in its commentary given two options if such an issue arises: The Article 25 on Mutual Agreement Procedures in various DTACs covers such instances of allowing a corresponding adjustment for TP, hence bilateral APAs should be allowed, or the countries (like India) that do not agree that Article 25 of DTACs cover corresponding TP adjustments, should make unilateral changes in their regulations to allow such adjustment.	
105.	a) Domestic Transfer Pricing [DTP] – Sections 92, 92BA, 92C, 92CA, 92D & 92E	The Finance Act 2012 has introduced DTP in spite of existing provisions under the Act which empower the Assessing Officer (AO) to re-compute the income of assessee availing profit-linked deductions if there are transactions with related parties or other undertakings of the same assessee (Sections 80A, sub section (8) and (10) of section 80-IA, certain sections under Chapter VI-A, or section 10AA). These transactions are presently benchmarked against fair market value. In this regard the following points require consideration: Harmonization of the “related party” definitions: Presently, two different sections referred to in section 92BA and section 92A of the Act have different thresholds for determination of the ‘related party’ definitions’ which are as under:	<i>There is clearly a need for harmonization of the different thresholds for the related party definitions’ in the sections 92A(2) and 80A read with section 35AD(8). Necessary amendments in this regard may be appropriately made.</i>



Sr. No	Section	Issue/Justification	Suggestion
		• Associated Enterprises - Not less than 26% of voting power – Section 92A(2)(a) & (b) • Associated Person - Not less than 26% of voting power – Section 80A read with section 35AD(8)	
	b) Arm's Length Price vs Ordinary Profits:	Section 80-IA(8) deals with "ordinary profits" whereas transfer pricing compliance refers to the "Arm's Length Price" of the transactions.	<i>Conceptually, 'price principles' cannot apply for benchmarking of 'profits'.</i>
		Currently, APA provisions are being made applicable to only international transactions.	<i>The same should also be made applicable to domestic transactions covered by DTP provisions</i>
	c) Documentation Requirements:	Where the volume of specified domestic transactions is below the threshold limit, the maintenance of documentation as required for transfer pricing should not be applicable.	<i>It is suggested that the maintenance of documentation as required for transfer pricing should not be applicable. Alternatively a threshold limit of Rs. 25 crore be introduced for TP documentation requirements.</i>



CHAPTER X-A

GENERAL ANTI AVOIDANCE RULES



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
106.	Section 94A- Special measures in respect of transactions with persons located in notified jurisdictional area	One of the tax consequences of a country or area being notified as NJA is that payments to persons located in that NJA would be subject to a higher withholding @ 30%. The relevant provision which provides for this implication i.e., section 94A(5), would be applicable notwithstanding anything to the contrary contained in the Act. Section 206AA which provides for higher withholding @ 20% in absence of PAN of payee is also applicable notwithstanding anything to the contrary contained in the Act. Though the intent appears to be that section 94A would override section 206AA, there may be some difficulties in interpretation.	<i>Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.</i>
107.	Section 94B- Limitation of interest benefit provisions introduced – certain concerns to be addressed	The Finance Act, 2017 introduced limitation of interest benefit (deduction) provisions in where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, pays interest exceeding rupees one crore in respect of any debt issued/guaranteed (implicitly or explicitly) by a non-resident AE. The interest shall not be deductible in computing income chargeable under the head 'Profits and gains of business or profession' to the extent, it qualifies as excess interest.	<i>In view of the above policy level issues, it is suggested that the restrictions imposed on the interest benefits on overseas borrowings may be done away with entirely or at least deferred for 5-10 years to give India a chance to achieve high growth and achieve significant infrastructural development and maturity.</i>



		Excess interest shall mean total interest paid/payable by the taxpayer in excess of thirty per cent of cash profits or earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to AEs for that previous year, whichever is less. There will be restriction on the deductibility of the interest in the hands of the taxpayer in a particular financial year to the extent it is excess as explained above. However, the same shall be allowed to be carried forward for a period of eight years and allowed as deduction in subsequent years. The above restrictions shall not be applicable to the taxpayer engaged in the business of banking or insurance. These provisions will be applicable for FY 2017-18 and subsequent years. (i) India is a developing country with a need for foreign investment to fund various initiatives, in particular, the development of India's infrastructure. The Government has given its support at a policy level, inter-alia, consistently reducing tax withholding rates on ECBs by Indian entities from non-residents, which indicates encouragement by the Government towards debt obtained by Indian entities by overseas parties. However, the	



		restrictions imposed under the proposed Section 94B above in respect of interest of overseas loans is giving mixed signals to foreign as well as Indian parties at a policy level on overseas borrowings. This inconsistency may lead to further policy level uncertainty in the minds of the business community in India and may undermine the attempts at enhancing the “ease of doing business” by the Government. Under existing ECB guidelines, there is already a mechanism in place to limit the Borrower’s Debt/Equity ratio, which effectively safeguards India’s interests with regard to excessive debt. As such, there is no need for any additional measure to protect India’s interests in this regard.	
	(ii)	Without prejudice to the aforesaid, if at all it is considered necessary to have provisions to limit the deductibility of interest, the exclusions granted to banking and insurance companies may be extended to other sectors such as Infrastructure and Non-Banking Finance Companies. Large capital intensive companies with long gestation periods, Non-Banking Finance Companies, companies in the real estate sector and companies in the infrastructure sector (requiring significant foreign capital which may not always come in the form of equity) are typically highly leveraged on account of the	<i>It is recommended to carve out exceptions for inherently highly leveraged industries from the aforesaid restrictions.</i> The exclusions granted to banking and insurance companies may be extended to other sectors such as Infrastructure, Non-Banking Finance Companies and loss making companies. <u><i>Also, the provisions should not be made applicable to new companies/start-ups (i.e. companies formed after 1 April 2016) for initial period of 3 years. This would help them to build good track record and be</i></u>



		business requirements (either by way of external or related party debt) and might be negatively impacted by the interest restriction.	<u>able to independently obtain debt without support of AE.</u> Alternatively, the provisions may not be applicable, subject to certain conditions in line with BEPS Action Plan 4.
	(iii)	The proviso to sub-section (1) provides that where debt is issued by a non-associated lender but an AE either provides implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an AE. In respect of explicit guarantees, the transaction relating to associated enterprises is only towards a guarantee commission (in case charged by the overseas guarantor). The interest towards the borrowing is paid in this case only to a third party wherein the rate and terms are decided purely through negotiation. Hence, restriction of benefit in relation to guarantees ought to be only to the extent of the guarantee commission (if any) claimed as a deduction by the Indian entity and not interest paid to the third party lender. Further, including implicit guarantees under the above restrictions would lead to significant hardship for the taxpayers and may result in protracted litigation in the coming years. It is pertinent to note that there is no clear definition of implicit guarantee and it would be an onerous task for the	<i>The said section should be amended to specify limitation of benefits in guarantee cases only to the extent of the guarantee commission (if any) paid by the Indian entity to the overseas guarantor (being its AE) and not the interest. Further, the word implicit guarantee may be dropped from the provisions. The term 'explicit guarantee' may also be appropriately defined to obviate future litigation on this front.</i>



		taxpayers and tax authorities to determine existence of an implicit guarantee. E.g. when a letter of comfort or simply an undertaking is provided by one AE to a lender or a bank, the tax authorities may contest that guarantee exists, without going into details whether the same has benefited the borrower and whether the AE has actually rendered any service or assumed any liability.	
	(iv)	Based on the definition of the term 'debt' as provided in clause (ii) of sub-section (5) of proposed section 94B, interest may include many other payments made on various kinds of financial arrangements and instruments. There may be an issue as to what payments made by the taxpayer needs to be included in the term interest e.g. which payments on account of finance lease and financial derivatives should be included in the term 'interest or similar consideration' etc. which may again lead to litigation.	<i>It is recommended that:</i> • <i>Appropriate guidelines may be issued to clarify what the term 'interest or similar consideration' should include or exclude as the definition provided in the existing Section 2(28A) of the Act may not be adequate for the purposes of thin-capitalisation rules based on the definition of the term 'debt'.</i> • <i>the provisions of this section should be made applicable to new debts taken on or after 1 April 2017.</i> • <i>Interest disallowed under other provisions (sections 40(a)(i) or 43B) should be specifically excluded from definition of "total interest".</i>
	(v)	There is lack of clarity on the mechanism to calculate EBITDA	<i>It is suggested that the mechanism to calculate</i>



		i.e. say, on the basis of book profits calculated on the basis of accounting standards, Ind-AS or otherwise. This may result in unnecessary litigation.	<i>EBITDA be clearly laid down.</i>
	(vi)	The BEPS Action Plan 4 provides for a Group Ratio Rule wherein the Group's overall third party interest as a proportion of the Group's EBITDA is computed and that ratio is applied to the individual company's EBITDA to determine the interest restriction. This would take into account the actual third party debt and leverage at global level vis-à-vis third parties. This also addresses the issue relating to inherently highly leveraged industries since the global leverage ratio would take into account the significant debt and would be commensurate to the leverage ratio required at individual country level. Given this, a relatively fair leverage requirement at India level would emerge.	<i>It is suggested in place of a fixed 30 per cent EBITDA restriction, a Group Ratio could be considered in order to apply the interest deduction restriction under the above provision.</i>
	(vii)	Sub-section (1) of Section 94B specifically requires the lending to be from a non-resident AE for the section to trigger. However, branches or permanent establishments of foreign banks are also "non-residents" for the purposes of the Income-tax Act. Whilst branches or permanent establishments of foreign banks operate essentially as Indian companies and compete directly with Indian banks, debt by related Indian branches of banks or guarantees given by AEs towards borrowings by Indian	<i>It is suggested that borrowings by Indian companies from Indian branches or permanent establishments of foreign banks may be wholly excluded from the purview of the aforesaid Sec 94B (either by way of direct borrowing from or by way of guarantee by AE to such branches or permanent establishments of foreign banks).</i>



		companies from branches or permanent establishments of foreign banks would qualify for disallowance under the above provision. This places the Indian branches of foreign banks at a disadvantageous position vis-à-vis competing Indian banks.	
	(viii)	Section 94B(4) provides that where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2): Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.	• <i>The CBDT may consider allowing carry forward of excess interest without any restriction on the number of years similar to provisions adopted in case of depreciation. However, in case the same is not feasible carry forward of excess credit should be allowed for a longer period, say 15 years, instead of the prescribed 8 years to cushion the long gestation periods for such industries.</i> • <i>It may further be clarified that set off will be available even if the section is not triggered in the subsequent year due to interest expense being less than INR 1 Crore.</i>
	(ix)	Carry forward of unused interest capacity: Section 94B(2) provides that the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes,	• It is suggested that there should be a credit mechanism to offset the unutilized limit in subsequent years.



		depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less. Business may not earn consistent profit year on year. However, the interest expenditure may be consistent. Given that EBITDA may vary on account of economic considerations, it may be that the cap of 30% may not be exhausted in a particular year (say year 1).	The period of set-off may be restricted to 3-5 years.
	(x)	Section 94B deals with limitation on interest deduction in certain cases. The relevant extract of the same is reproduced below: <i>"94B. (1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2):</i> Provided that where the debt is issued by a lender which is not associated but an associated enterprise either provides an	Thus with a view to resolve the issue discussed, it is suggested that for the purpose of computing 'excess interest' under section 94B(2), the term 'total interest paid or payable' should only include interest paid to the associated enterprise.



		<i>implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.</i> <i>(2) For the purposes of sub-section (1), the excess interest shall mean an amount of <u>total interest paid or payable</u> in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.</i><u>(emphasis supplied)</u>. I. Issue Whether for purpose of determining amount of excess interest under section 94B(2), interest paid to third party lenders (i.e. other than associated enterprises) should be included in 'total interest paid or payable' or it should only include interest paid or payable to associated enterprises? Rationale: • Sub-section (2) to section 94B refers to "<i>an amount of total interest paid or payable</i>". The literal reading of the section does not create any limitation on inclusion of interest paid or payable to associated enterprises only. The words referred to are 'total interest paid or payable'.	



		The legislature in its wisdom has separately referred to “<i>an amount of total interest paid or payable</i>” and “<i>interest paid or payable to associated enterprises</i>” within the same sub-section itself. Thus, basis the literal reading of the section, interest paid to third party lenders shall be included in ‘total interest paid or payable’ for the purposes of computing the excess interest under section 94B(2). Having said the above, it may be possible to contend that interest paid to third party lenders may not be included in ‘total interest paid or payable’ for the purposes of computing the excess interest basis the intention of the legislature as per the Memorandum explaining the provisions of Finance Bill Basis the intention of the legislature as per the Memorandum explaining the provisions of Finance Bill, it may be possible to contend that interest paid to third party lenders may not be included in ‘total interest paid or payable’ for the purposes of computing the excess interest. Reference could also be made Commentary on Finance Act, 2017 published in Taxmann’s Master Guide to Income Tax Act [at page 1.91 para 1.7-8a]	
108.	Section 95 – Applicability of GAAR to be effective	Section 95 was amended via the Finance Act, 2015 to provide that provisions of Chapter X-A relating to General Anti-	<i>It is suggested that:</i> <i>(a) All transactions entered into before 01.04.2017 be provided protection from</i>



	from A.Y.2018-19 - Protection from applicability of GAAR should not be restricted to only investments, but may extend to all transactions upto 31.03.2017	Avoidance Rule (GAAR) are made applicable from A.Y. 2018-19. In effect, the applicability of GAAR is deferred by two years. In this regard, the following further amendments are required: (a) As per the Explanatory Memorandum to the Finance Bill, 2015, investments made up to 31.03.2017 are to be protected from the applicability of GAAR by amendment in the relevant rules in this regard. Accordingly, Rule 10U has been appropriately amended, and all investments made before 1.4.2017 are protected from the applicability of GAAR. However, all transactions entered before 01.04.2017, and not only investments made, need to be protected from the applicability of GAAR, so as to further improve the investment climate in the country (b) Further, the applicability of section 144BA providing for reference to Principal Commissioner or Commissioner to declare an arrangement as an impermissible avoidance arrangement in order to determine the consequence of such an arrangement within the meaning of Chapter X-A, also needs to be consequently deferred by two years and made applicable from A.Y.2018-19.	<i>applicability of GAAR, so as to further improve the investment climate in the country.</i> <i>(b)Section 144BA, providing for reference to Principal Commissioner or Commissioner in certain cases, be consequently deferred by two years and made applicable with effect from A.Y.2018-19.</i>
109.	Section 95 - General Anti-	a) Meaning of the terms 'Substantial' and 'Significant' in Section 97(1) of the Act	• <i>It needs to be clarified what shall constitute as "substantial commercial</i>



	Avoidance Rule	The Finance Act, 2015 deferred implementation of General Anti Avoidance Rules (GAAR) by two years so as to introduce provisions of GAAR with effect from Financial Year (FY) 2017-18. The Finance Act, 2016 provides for the effective date as 1 April 2017. Section 97(1) of the Act provides that an arrangement shall be deemed to be lacking commercial substance, if inter alia;- • it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit for a party; or • it does not have a significant effect upon business risks, or net cash flows apart from the tax benefit. The terms 'substantial commercial purpose' and 'significant effect' in the context of GAAR have not been defined in the Act.	<i>purpose' and "significant effect' for the purpose of section 97 of the Act.</i> • <i>Substantial commercial purpose may be explained with reference to the terms used viz. location of an asset/transaction or place of residence of a party (for e.g. whether it would be specified value of assets located; value of a transaction as comparable to the total assets of the business or any other such related parameter).</i> • <i>Similarly, what will constitute as 'significant effect' vis-a-vis business risks / net cash flows needs to be clarified.</i>
		b) Clarification on the term 'tax benefit' as defined under section 102(10) of the Act The term 'tax benefit' as defined under section 102(10) of the Act includes,— <i>"(a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or</i> <i>(b) an increase in a refund of tax or other amount under this Act; or</i>	<i>Clause (e) and (f) should be appropriately worded to correspond with the 'tax' amount. In other words, the reference to income/loss should not be the base for defining the term 'tax benefit'. In line with the Expert Committee recommendations, it is suggested that:</i> <i>a) the tax benefit should be computed in the year of deferral and the present value</i>



		(c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or (d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or (e) <u>a reduction in total income;</u> <u>or</u> (f) <u>an increase in loss,</u> <i>in the relevant previous year or any other previous year;”(Emphasis supplied)</i> Clause (e) and (f) in the definition refer to “reduction of total income” and “increase in loss” as tax benefit. An ambiguity arises as to how tax benefit is conditioned at income / loss level. This may also defeat the objective of INR 3 crore tax benefit threshold as provided in Rule 10U of the Income-tax Rules, 1962 (the Rules). Computation of tax benefit on deferral of tax (which is merely a timing difference) needs to be clarified. As observed by the Expert Committee recommendations⁶, in cases of tax deferral, the only benefit to the taxpayer is not paying taxes in one year but paying it in a later year. Overall there may not be any tax benefit but the benefit is in terms of the present value of money.	<i>of money should be ascertained based on the rate of interest charged under the Act for shortfall of tax payment under section 234B of the Act.</i> <i>b) for the sake of clarity it may be specified that tax benefit for the purposes of the threshold shall include only income tax, dividend distribution tax and profit distribution tax, and shall not include other amounts like interest, etc.</i>

⁶Page 48 and 49 of the Final Report by the Expert Committee on GAAR chaired by Dr. Parthasarathi Shome.



		Further, as observed by the Expert Committee ⁷ , the term tax benefit has been defined to include tax or other amount payable under this Act or reduction in income or increase in loss. The other amount could cover interest.	
		c) India has signed the 'Multilateral Instrument' (MLI) in accordance with the Base Erosion Profit Shifting (BEPS) Action Plan 15 of the OECD, which, inter alia, deals with the denial of tax treaty benefits in certain cases of anti-abuse arrangements/transactions entered into by the taxpayer. The MLI provides for insertion of anti-abuse provisions (the PPT and the LOB provisions) in the tax treaties so as to deny tax treaty benefits in case of abusive arrangements/transactions being entered into by the taxpayer. The anti-abuse provisions inserted through the MLI would be effective once the same are ratified by both the signatories to the MLI. With India having signed the MLI, there could be a possibility that the same transaction/arrangement could be subjected to multiple anti-abuse provisions, one would be through the anti-abuse provisions inserted in the tax treaty network through the MLI and second by way of the same transaction being subjected to the GAAR provisions which also targets anti-abuse provisions.	<i>It is suggested that GAAR provisions should not be made applicable to abusive transactions (in the case on MNE's) which are subjected to anti-abuse provisions under the tax treaty pursuant to adoption of the MLI provisions. Once the anti-abuse provisions are inserted in the respective tax treaties through the MLI, the government could then assess the situation and examine if GAAR provisions should be made applicable in the case of the said non-resident taxpayers'. This would also pave the way for a conducive economic environment and persuade the global multinationals to establish their foot print in India with a clarity on the domestic tax laws prevalent in the country.</i>

⁷Page 47 of the Final Report by the Expert Committee on GAAR chaired by Dr. Parthasarathi Shome.



CHAPTER XII-

DETERMINATION OF TAX IN SPECIAL CASES



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
110.	Removal of anomalies in sections 111A & 112	At present, long term capital gain is taxed @ 20% in pursuance of the provisions of section 112. Whereas, in case of individual assessee having normal income, the rate of tax upto Rs. 5,00,000 is only 10%. This leads to a situation where in case if one's gain from transfer of long term capital asset is below Rs. 5,00,000 then also he is required to pay tax @ 20% plus cess as per section 112 whereas his tax liability otherwise would be much lesser. Similar is the situation in case of short term capital gain by way of sale of equity shares as provided u/s 111A, where the tax rate is 15% which is more than the minimum rate of tax payable by the individuals.	<i>It is suggested that appropriate provisions be made in the Act whereby the tax liability of an individual whose taxable income consists of only long term or short term capital gain, should not in any case, exceed the amount of tax liability calculated deeming the capital gain as regular income. This can be done by making the provisions of Section 111A & 112 optional.</i>
111.	Section 112(1)(c) - Long-term capital gains on shares of a company, not being a company in which public are substantially interested, to be eligible for concessional rate of tax @ 10%	Section 112(1)(c)(iii) was introduced in the year 2012 to extend the beneficial rate of tax at the rate of 10 percent, on long-term capital gains (which was earlier only available to Foreign Institutional Investors) to other non-resident investors including Private Equity Investors. The Finance Act, 2016 amended Section 112(1)(c)(iii) of the Act to replace the word 'unlisted securities' with 'unlisted securities or shares of a company not being a company in which the public are	<i>It is suggested that the benefit of concessional rate of 10% be extended to resident shareholders also on sale of shares of a company not being a company in which public are substantially interested.</i>



Sr. No	Section	Issue/Justification	Suggestion
		substantially interested' with retrospective effect from FY 2012-13. It has been stated in the Memorandum explaining the Finance Bill, 2016 that under the existing provisions of Section 112(1)(c)(iii) of the Act, a view was taken by some of the Courts that shares of a Private Company do not constitute 'Securities' under SCRA. The amendment has been made to clarify that the section was introduced with an intention to extend the benefit to LTCG arising on shares of a company, being a company in which the public are not substantially interested (i.e. private company) as well.	
112.	Section 115BBC read with section 13(7) - taxation of anonymous donations	The Finance (No.2) Act, 2014 had substituted Section 115BBC(1)(ii) w.e.f 1-4-2015 to provide income tax payable shall include the amount of income tax with which the assessee would have been chargeable had his total income been reduced by the anonymous donations received in excess of 5% of donations received or Rs.1,00,000 as the case may be. Further, section 13(7) provides nothing contained in sections 11-12 shall operate so as to exclude from the total income of the previ	Section 13(7) may be reworded as follows:- <i>“Nothing contained in section 11 and 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of <u>clause (i) of sub-section (1) of that section.</u></i>



Sr. No	Section	Issue/Justification	Suggestion
		year of the person in receipt there any anonymous donation referred in section 115BBC on which tax payable in accordance with provisions of that section. Section 13(7) refers to the anonymous donations on which tax is payable in accordance with the provisions of section 115 BBC. Since the income tax payable under section 115BBC in aggregate of tax payable on such donations (115BBC(1)(i)) and tax payable on other income (115BBC(1)(ii)), the language of section 13(7) needs to be amended to include reference of tax payable in accordance with the provisions of section 115BBC(1)(i).	
113.	Section 115BBDA – Dividend received by resident individuals, HUFs and firms receiving dividend in excess of Rs.10 lakh to be subject to tax @ 10% in their hands – Consequence of the new levy- Triple taxation	The provision to tax dividend in the hands of the recipient results in economic four level taxation viz. - once as corporate tax on profits, - secondly as DDT in hands of the company, - thirdly as tax on dividends. - Fourth by disallowing expenses on dividend u/s. 14A. The economic tax ultimately borne by resident shareholders may be as high as 54%.	<i>It is suggested that this levy amounting to multiple level taxation on profits may be done away with.</i> <i>Alternatively, the earlier system of taxation of dividend, prior to 1997, namely, tax in the hands of the shareholder can be re-introduced and levy of Dividend Distribution Tax in the hands of the company may be removed.</i>
114.	Tax on certain dividends	In the Finance Act, 2016 new section 115BBDA was	<i>As the timing of receipt of dividend is uncertain and</i>



Sr. No	Section	Issue/Justification	Suggestion
	received from domestic companies (Section 115BBDA)	introduced to levy tax on certain dividend income received by a resident individual, HUF and firms aggregating Rs.10 lakhs at the rate of 10%. However the act has not clarified about the payment of advance tax on the same.	<i>estimation of the same is also not possible, it is suggested that exemption from advance tax provisions may be given for such Dividend Income taxable under section 115BBDA.</i> <i>Further, it is suggested that full and complete advance tax in this respect may be permitted to be paid by the 31st march of the previous year.</i>
115.	Section 115BBDA – Scope of section 115BBDA, initially restricted to individuals, HuFs and Firms, expanded – Certain pooling vehicles like Mutual funds, AIFs etc. to be exempted	The Finance Act, 2016 had inserted a new Section 115BBDA to tax dividend income in excess of Rs. 10 lacs in case of an Individual, HUF and Firm at the rate of 10%. The Finance Act, 2017 extended the scope of section 115BBDA of the Act to include all categories of persons within its purview except a domestic company, a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv) or section 10(23C)(v) or section 10(23C)(vi) or section 10(23C)(via), a trust or institution registered under section 12AA. The aforesaid amendment as made in section 115BBDA of the Act only excludes certain specified persons from its purview. Therefore, by implication, all other persons are covered within the purview of Section 115BBDA of the Act. The said amendment	<i>To remove such hardship, it is requested that a suitable amendment may be brought in to exclude pooling vehicles like Mutual funds, AIFs, etc. from the purview of section 115BBDA.</i>



Sr. No	Section	Issue/Justification	Suggestion
		particularly impacts some of the pooling vehicles such as Mutual funds and Alternative Investment Funds (AIFs) which represent multiple investors, to whom the income earned has to be distributed. Pursuant to the amendment made, dividend in excess of Rs. 10 lakhs would become taxable in the hands of the aforesaid pooling vehicles even though the share of dividend income of each investor in such pooling vehicles may not exceed Rs. 10 lakhs.	
116.	Section 115BBF – Concessional rate of tax @ 10% on income from patent – Issues to be addressed		
	a) Benefit may be extended to other intellectual property rights	The Finance Act, 2016 has inserted section 115BBF to tax royalty income derived from worldwide exploitation of patents developed and registered in India @ 10%. It is a welcome move and would greatly boost the research and innovation environment in the country. However, the provision provides the benefit of reduced rate of tax to only royalty income derived from patents subject to specified conditions. This may partly achieve the intended objective of the government behind introduction of this provision i.e. to encourage indigenous research & development activities and to make India a global R & D hub, research is the driver of innovation and innovation provides a thrust to economic growth.	<i>It is suggested that the benefit of concessional rate of tax @ 10% of income by way of royalty in respect of a patent developed and registered in India be also extended to other intellectual property rights like know-how, copyright, trade-mark etc.</i>



Sr. No	Section	Issue/Justification	Suggestion
		The current income tax law treats the other intellectual rights like any know-how, copyright, trade-mark, license, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services in the same vein as patent. Hence, there appears to be no reason not to extend the benefit of section 115BBF to income from other intellectual property rights. In particular, it needs mention that jurisdictions like Ireland, Luxemburg extend benefit by specifically covering software within the list of qualifying assets though; commercially it enjoys protection under Copyright Act and not under Patent Act.	
	b) Benefit restricted to 'true and first inventor of the invention': Benefit may be extended to assignee of the true and first inventor in respect of the right to make an application for a patent	The benefit of the provision is restricted to 'true and first inventor of the invention'. As per the provision, even a person who is jointly registered with 'true and first inventor' should be 'true and first inventor'. In view of following features under the Patent law, the benefit of the provision may be denied to firms/LLPs/companies who register the patents jointly with true and first inventor who may be an employee even though	<i>It is, hence, suggested that the condition of joint patentee also being 'true and first inventor' be omitted. If the intent is to allow benefit only to first person to register patent, the phrase 'being the true and first inventor of the invention' used in context of joint person may be substituted with the phrase 'being the assignee of the true and first inventor in respect of the right to make an application for a patent'.</i>



Sr. No	Section	Issue/Justification	Suggestion
		they may have incurred significant expenditure for development of the patent and they are first economic owners of such patent. Under the Patents Act, following persons can apply for patent (a) a person claiming to be true and first inventor of the invention (b) an assignee of the true and first inventor in respect of right to make an application and (c) legal representative of a deceased person who immediately before his death was entitled to apply. It is also settled under the Patent Act that a company or firm cannot claim to be 'true and first inventor'. They can only apply as assignee of true and first inventor. Similarly, whether an invention made by employee should belong to employer depends upon contractual relations, express or implied. It is possible that, in the absence of any contractual obligation, an employee may apply for an invention in his own name even though he developed the invention in the course of employment and by using employer's resources.	
	c) Benefit may be extended to capital gains arising on sale of patented products	The taxpayer may exploit its Intellectual Property by outright transfer which has no differential impact merely because for one assessee the amount is assessable as business income whereas for other it is assessable as capital gains income. There is no	<i>It is suggested that, in line with BEPS Action 5, in addition to royalty income, this concessional regime maybe extended to income on sale of patented products also.</i>



Sr. No	Section	Issue/Justification	Suggestion
		reason to exclude amount which is chargeable as capital gains in the hands of the taxpayer.	
	d) Extension of benefit to royalty income earned from inventions for which patents are applied under Patents Act 1970 but registration is awaited	The commercial exploitation of invention starts even before it is formally registered as a 'patent' under the Patents Act. The Patents Act recognises that even the right to apply for patent can be assigned. As per the provision, royalty from a patent which is 'registered' alone will qualify for the new regime. If royalty income is earned when patent application is filed but registration is awaited, there may be denial of the benefit.	<i>It is suggested that the concessional tax regime be extended to royalty income earned from patents which are applied for and awaiting registration as well.</i>
	e) Other Issues which need to be addressed	Some of the conditions for availing the benefit of concessional tax regime is that the patent should be developed and registered in India, the patentee should be a resident and income should be in the nature of royalty.	<i>To make the regime truly meaningful and comparable to the regimes which exist in other jurisdictions, its scope need to be extended to cover or clarify the following:</i> <i>a. That consideration received for settling infringement disputes is also an alternative form of royalty which qualifies for the benefit.</i> <i>b. To provide an option to the taxpayer to opt out of the regime if the expenditure and allowances admissible in computation of royalty income is likely to result in net taxation below the regime prescribed rate.</i> <i>c. Since almost all comparable jurisdictions extend benefit to non-</i>



Sr. No	Section	Issue/Justification	Suggestion
			<i>resident permanent establishment which develops IP under the circumstances comparable to those under which IP is developed by the resident. The benefit may be extended to non-resident having permanent establishment in India.</i> <i>d. In case of a business reorganisation in the form of merger, demerger etc., the successor entity and in case of death of the patent owner, its legal heir/inheritor of the patent may be considered as eligible to claim the benefit provided such successor/legal heir satisfies the condition of being a resident of India.</i>
117.	Insertion of section 115BBG - Income from transfer of carbon credits to be taxed @ 10% - Inclusion in definition of income under section 2(24) and clarification regarding tax treatment for prior assessment years	The introduction of section 115BBG vide the Finance Act, 2017 providing for a 10 percent tax on income from transfer of carbon credits is a welcome move. This would go a long way in helping to resolve the uncertainty and litigation over the taxability of income from the transfer of carbon credits going forward. Consequent amendment is required in the definition of the term 'income' under Section 2(24) of the Income-tax Act to include the income from transfer of carbon credits.	It is suggested that: a. <i>Section 2(24) may be amended to include income from transfer of carbon credits in the definition of "income".</i> b. <i>for the periods prior to Assessment Year 2018-19, an option may be given to taxpayers to voluntarily offer income from transfer of carbon credits to tax at the same 10% rate as contemplated in section 115BBG. This can help put an end to protracted litigation on the issue.</i>



Sr. No	Section	Issue/Justification	Suggestion
		Further, the position regarding taxability of income from transfer of carbon credits for earlier years may be clarified since there have been divergent decisions given by the courts on whether such receipts are capital or revenue in nature. If the tax treatment is made applicable for earlier years also, it would garner more revenue from assesseees who have not offered the same to tax on the ground that the same represents capital receipt. This would also help avoid future litigation and complete pending assessments. The Government has also been taking several steps aimed at curbing litigation. These include coming up with schemes for dispute resolution both for legacy disputes arising out of retrospective amendments as well as other disputes that are pending in the appellate hierarchy. These measures and schemes are welcome steps and have been commended by the taxpayers. A similar scheme for income from transfer of carbon credits for the past years would go a long way towards furthering the Government's stated objective of curbing litigation.	<i>Considering that such receipts have been held as non-taxable capital receipts by two High Courts, such a move will also benefit the exchequer.</i> <i>The option to pay tax on such receipts at 10% could be structured as a one-time scheme open for a limited time.</i>



CHAPTER XII-B

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
118.	Section 115JAA – Extension of period of carry forward of MAT credit from 10 years to 15 years - Clarity regarding carry forward and set off of MAT credit in cases where the ten year period has expired on or before AY 2016-17 but the fifteen year period has still not expired	The Finance Act, 2017 amended section 115JAA of the Income-tax Act, 1961 to provide that the tax credit in respect of Minimum Alternate Tax (MAT) paid by companies under section 115JB of the Act can be carried forward up to fifteenth assessment year immediately succeeding the assessment year in which such tax credit becomes allowable. This amendment is being made effective from 1 April, 2018. Earlier, the MAT credit was not allowed to be carried forward beyond ten assessment years. The relevant provisions of Section 115JAA of the Act are reproduced as under- “(3A) The amount of tax credit determined under sub-section (2A) shall be carried forward and set off in accordance with the provisions of sub-sections (4) and (5) but such carry forward shall not be allowed beyond the tenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under sub-section (1A). (1A) Where any amount of tax is paid under sub-section (1) of section <u>115JB</u> by an assessee, being a company for the assessment year commencing on the 1st day of April, 2006 and any subsequent assessment year, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.” (Emphasis supplied) An issue arises in cases where the	<i>In line with the intent of the legislative amendment and to ensure equity, it is suggested that appropriate clarification either by way of an Explanation in section 115JAA or by way of an Explanatory circular be issued to the effect that such benefit is available even in cases where the ten year period expired before A.Y.2018-19 but the fifteen year period has still not expired.</i>



Sr. No	Section	Issue/Justification	Suggestion
		ten year period has expired with the assessment year 2016-17 owing to completion of 10 years period on the basis of the erstwhile provisions. In such cases, having regard to the amendment made, a question arises as to whether the benefit which has already lapsed will get a new lease of life. The ambiguity arises since the extension of carry forward period to fifteen years shall take effect only from April 1, 2018 (i.e. A.Y. 2018-19). It may be noted that a similar amendment was made in Section 115JAA vide the Finance Act, 2009 wherein the carry forward of MAT credit was extended upto 10 assessment years from 7 assessment years. The Explanatory Memorandum to the Finance Bill, 2009 reads as under: <i>“..the assessees, being companies, who pay Minimum Alternate Tax under section 115JB for any assessment year <u>beginning on or after the 1st day of April, 2006</u>, it is also proposed to amend the provisions of sub-section (3A) of section 115JAA...” (Emphasis Supplied)</i> The issue discussed above did not exist when the tenure was extended from 7 to 10 years as the amendment was brought before the expiry of the available bracket for carry forward. The memorandum explaining the provisions of the Finance Bill, 2017 states as follows: <i>“Section 115JAA contains provisions regarding carrying forward and set off of tax credit in respect of Minimum Alternate Tax (MAT) paid by companies under section 115JB. Currently, the tax credit can be carried forward upto</i>	



Sr. No	Section	Issue/Justification	Suggestion
		tenth assessment years. With a view to provide relief to the assesseees paying MAT, it is proposed to amend section 115JAA to provide that the tax credit determined under this section can be carried forward up to fifteenth assessment years immediately succeeding the assessment years in which such tax credit becomes allowable... These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.” (Emphasis Supplied) It appears from the language of the Memorandum that the intent of the legislature is to provide relief to the taxpayers paying MAT by extending the carry forward period for MAT credit. However, the strict interpretation of the provisions does not appear to sync with this intent. The issue in hand needs to be addressed so that taxpayers’ whose MAT credit carry forward period has lapsed should not be at a disadvantage and suffer from the transitional impact of the said amendment.	
119.	Section 115JAA(2A) - Restriction on carry forward of MAT/AMT credit and claim of FTC in relation to taxes under dispute - Restriction to be removed	In line with Rule 128(7), the Finance Act 2017 inserted second proviso to section 115JAA(2A) restricting quantum of MAT credit to be carried forward to subsequent years. The proviso provides that where the amount of FTC (Foreign Tax Credit) available against MAT/AMT is in excess of FTC available against normal tax, MAT/AMT credit would be reduced to the extent of such excess FTC.	The restriction on carry forward of MAT/AMT credit may be removed.



Sr. No	Section	Issue/Justification	Suggestion
		Similar restriction is imposed in S. 115JD(2) on AMT credit. Both the provisions are made effective from 1 April, 2018 i.e. will apply in relation to A.Y. 2018-19 and onwards. The rationale of aforesaid restriction/limitation is not clear. The restriction on quantum of MAT/AMT credit to be carried forward subjects taxpayer to duplicated MAT liability while denying the rightful carryover of MAT/AMT credit. The FTC is an alternative form of tax payment. For all purposes including for grant of refund or levy of interest, FTC is treated as advance tax paid to the extent the same is creditable against tax liability in India. Once MAT liability is admitted to be tax liability on income in India, there is no justifiable reason for treating FTC separately depending on whether FTC is creditable against normal tax liability or MAT liability. The said amendment is inconsistent with the Government's assurance that MAT is to be effectively phased out and incidence of MAT is to be counter matched by grant of extended period of MAT credit.	
120.	Set Off of MAT Credit from Tax on Total Income before charging surcharge and education cesses - Section 115JAA	There is no ambiguity with regard to the method of computation of tax liability in view of the fact that income tax e-filing return Form ITR 6 allows deduction for credit under Section 115JAA from the gross tax payable excluding surcharge and education cesses and specifically instructs an assessee to compute surcharge and education cess on the tax payable after reduction of MAT Credit brought forward u/s 115JAA. The manner of set off of brought forward MAT Credit is nowhere prescribed in the Income-tax Act, 1961. But the issue is	<i>It is suggested that Set-off of B/f MAT Credit as per Section 115JAA may be allowed against tax on total income before charging any surcharge and education cesses.</i>



Sr. No	Section	Issue/Justification	Suggestion
		squarely covered by the decision of the Hon'ble Allahabad High Court in CIT v Vacment India (2014) 369 ITR 304.	
121.	Section 115JB – Amendment required and clarification sought in respect of taxability of waiver of Principal amount by banks/ NBFC	BACKGROUND Presently, there is increased focus on resolution of large NPAs faced by banking sector. The Government and RBI are vigorously pursuing several measures to reduce NPAs through different debt-restructuring schemes. Extreme measure of initiating insolvency proceedings against large borrowers through newly enacted Insolvency and Bankruptcy Code 2016 is also being pursued. The Sick Industrial Companies (Special Provisions) Act, 1985 (for which necessary benefit is given under existing section 115JB) is repealed in December, 2016. The outcome of compromise or debt restructuring measures is likely to result in a situation where substantial part of debt owed by the borrower company may be waived by the lenders. The borrowing companies may consequently write back such liabilities in their books by credit to Profit & Loss statement as required by applicable Accounting Principles. Issues The loan waiver (which may include outstanding principal and interest) is not likely to adversely impact companies in normal tax computation having regard to following:- i. Waiver of outstanding interest which has not been allowed	<i>In view of aforesaid, it is suggested that:</i> 1. (i) <i>The provisions of section 115JB of the Income-tax Act, 1961 may be suitably amended to provide for specific exclusion for:</i> a) <i>principal amount of loan waiver credited to the statement of Profit and loss and</i> b) <i>interest waiver credited to the statement of Profit and loss to the extent it was not debited to the statement of Profit and loss in earlier years where the waiver is granted by banks or public financial institutions or NBFC pursuant to any scheme framed under RBI guidelines or proceedings under Insolvency and Bankruptcy Code 2016.</i> (ii) <i>The existing provisions which provides for reduction of lower of loss or depreciation for the purpose of computation of book profit may be amended to remove the condition of</i>



Sr. No	Section	Issue/Justification	Suggestion
		as deduction in view of limitation of section 43B (which permits deduction only on actual payment) is not taxable u/s 41(1). This includes interest which is capitalised to asset cost as required by proviso to section 36(1)(iii) read with ICDS IX and/or ICAI's AS16. Section 41(1) being a claw back provision captures only those items which have earlier been allowed as deduction in normal tax computation. ii. Waiver of principal amount of loan which has been used for capital purposes, as per preponderant judicial view, is not taxable as 'income' under normal computation. It is not taxable u/s 41(1) since the loan was not allowed as deduction in the past. The waiver represents a capital receipt which is outside the scope of charging provisions of section 4 and 5 of the Income-tax Act, 1961. However, on waiver of principal amount of loan used for working capital purposes, taxpayers are facing difficulty in view of court rulings which have held such waiver to be taxable as business income Due to the waiver of loan and interest which will be credited to profit and loss account, borrower companies will have to consider Minimum Alternate Tax provisions of section 115JB which seeks to levy minimum tax @ 18.5% of 'book profit'. The 'book profit' is computed by adopting net profit as per Profit and loss A/c and subjecting it to upward and downward adjustments prescribed in section 115JB. To the extent, waiver of outstanding interest which was debited to Profit and loss in earlier years is included in 'book profit' of current year and	depreciation and thereby the entire unabsorbed losses (including unabsorbed depreciation) as per books of accounts should be allowed to be reduced for the purpose of calculation of book profit. 2. There are disputes about taxability of waiver of principal amount in respect of working capital loans from Banks/ NBFC. As explained, waiver of principal amount in Resolution Plan under Insolvency and Bankruptcy Code will help to revive the company. On principles, there is no difference between loan used for acquiring capital asset or for working capital. The loan raised is not allowed as business deduction to trigger section 41(1) on waiver. Also, waiver of loan cannot be regarded as business perquisite u/s. 28(iv) which can apply only to benefits received in regular course of business (like freebies or gifts) Hence it is requested to clarify that any waiver of principal amount by banks/ NBFC will not be taxable under normal provisions of the Act.



Sr. No	Section	Issue/Justification	Suggestion
		taxed under MAT, it would be fair to treat the amount as income being identical to taxation under normal computation u/s 41(1). Under MAT provisions, the taxation of principal amount of loan waiver used for capital purposes and/or interest which was capitalised to asset cost under AS 16 by including the same in 'book profit' creates onerous burden on borrower companies for following reasons :- i. It is well settled that waiver of said amounts are not liable to tax under normal computation. This results in mismatch between normal computation and MAT based on 'book profit'. ii. The waiver amounts are likely to be substantial resulting in huge MAT liability at effective MAT rate of 18.5% on waived amounts. iii. The exclusion provided in MAT computation for profits of sick industrial companies till net worth of such companies becomes NIL or positive is not effective since Sick Industrial Companies (Special Provisions) Act, 1985 is now repealed and all such companies will now have to file the application under Insolvency and Bankruptcy Code. Further, even under existing provision, exclusion does not apply if waiver is granted when net worth of the company is positive. iv. The provisions for set-off of brought forward book loss/unabsorbed depreciation in MAT computation are very restrictive. Set off is available for lower of the two figures and no set off is available if one of the two	



Sr. No	Section	Issue/Justification	Suggestion
		figures is NIL. Hence, company is not able to effectively absorb past book losses in its MAT computation. v. A company which is already reeling under high debt and losses and is attempting to recover through debt restructuring scheme will face substantial cash flow burden due to MAT liability with no visibility on whether it will be able to utilise the MAT credit over next 15 years. Companies which get liquidated pursuant to insolvency proceedings will never be able to utilise the MAT credit. vi. Bankers will also be reluctant to waive off their secured debt if they realise that substantial part of debt waived off in the interests of reviving the company will get locked up in MAT payment. Besides it is also unfair to tax the principal amount of loan waiver under MAT for following reasons:- i. MAT was introduced to make companies which declared high profits and paid dividends to shareholders but paid very little or low taxes by availing different tax incentives, pay a minimum amount of tax. ii. It is an alternate basis of taxation in lieu of normal computation. MAT cannot overreach the charging provisions of section 4 and 5 and seek to levy tax on capital receipts which are not liable to tax under normal computation. It is well settled that every receipt is not income. iii. Principal amount of loan waiver as a capital receipt stands on a different footing as compared to other capital receipts like exempt capital gains which, but for specific exemption under normal computation, are otherwise within	



Sr. No	Section	Issue/Justification	Suggestion
		the scope of definition of 'income' and charging provisions of section 4 and 5. iv. It is unfair to exempt revenue incomes like dividend from companies or mutual funds but tax capital receipts in the form of loan waiver under MAT. Unfortunately the subject is highly controversial and there are conflicting judicial precedents – some in favour of taxpayer and others favouring the Tax Authority. The Government is very keen for implementation of Insolvency and Bankruptcy Code for reducing the NPAs and to provide support to companies for revival / restructuring their operation in the best possible manner. To attain this objective it is suggested that necessary amendment may be made in section 115JB of the Income-tax Act to align with the Government's objective for proper implementation of IBC Code.	
122.	Exclusion of Capital Profit/Loss & Profit & Loss on Sale of Fixed Assets & Investments in computing Book Profit for the purpose of Levy of MAT u/s 115JB	Sec 115JB of the Income-tax Act, 1961 read with first proviso to Section 10(38) of the Act. Under the general arrangement of the provisions in the Act under each head of income, normally the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a	<i>It is suggested that:</i> <i>(i) Section 115JB may be suitably amended so that capital profit/loss & Profit & Loss on Sale of Fixed Assets & Investments is excluded in computing Book Profit u/s 115JB;</i> <i>(ii) the first proviso to Section 10(38) of the Act, 1961 be also omitted.</i>



Sr. No	Section	Issue/Justification	Suggestion
		case was not intended to fall within the charging section. In this regard, it is pertinent to note that capital receipt which does not have any element of 'income' or 'profit' embedded therein is neither chargeable to tax under the Income-tax Act nor includible in P&L A/c prepared as per Schedule III to the Companies Act, 2013. The expression 'income' has been defined in Section 2(24) of the Act. The said section defines the expression 'income' in an inclusive manner and has been expanding from time to time. Several items have been brought within the definition of 'income' from time to time by various amending Acts. Any receipt may partake any of the two character, either revenue nature or capital nature. Receipt in revenue nature only amounts to income which is chargeable to tax. On the other hand, capital receipts are not income, and accordingly, they are not subject to income tax levy. Above view has been fortified by the Hon'ble Apex Court in the case of Padmaraje R. Kadambande v CIT (1992) 195 ITR 877 (SC) wherein it has been held that capital receipt are not income within the meaning of section 2(24) of the Act. The above decision of the Apex Court clearly lays down that a capital receipt, in principle, is outside the scope of income chargeable to tax. A receipt, which is not in the nature of income, cannot be taxed as income. When the accounts are prepared in accordance with Schedule III of the Companies Act, 2013 and while making adjustments as per the provisions of section 115JB, to compute book profits, the amounts which are not taxable or	



Sr. No	Section	Issue/Justification	Suggestion
		exempt are excluded, because such amounts do not really reflect a receipt in the nature of income.	
123.	Section 115JB - Applicability of Minimum Alternate Tax (MAT) on foreign companies – Benefit may be extended to foreign companies having permanent establishment and covered under the presumptive tax regime in India	The Ministry of Finance has clarified that foreign company not having a permanent establishment in India will be exempt from MAT. An appropriate amendment has been made in the Act in section 115JB in this regard vide the Finance Act, 2016. The Income-tax Act, 1961 contains various provisions which provides for presumptive tax regime for non-residents (for example Section 44BB). Under the presumptive tax regime, foreign companies pay tax at lower rate. Such foreign companies do form permanent establishment in India even when their activities are confined to the areas specified in the presumptive tax provisions. If such foreign companies are subjected to MAT, the purpose for which the beneficial concessional tax rate regime has been introduced as specified in the relevant sections would be defeated. MAT levy may be restricted to India profits Companies not having PE or Place of Business in India are eligible for absolute exclusion from MAT levy. However, in relation to foreign companies with presence in India, who may or may not have separate India specific accounts, issue may	<i>It is suggested that</i> <i>(a) a suitable amendment may be made providing that foreign companies having permanent establishment in India and covered under the presumptive tax regime may be kept outside the purview of MAT.</i> <i>(b) in order to avoid any controversy, it may be clarified that in case of foreign companies having PE / Place of Business in India, the computation of book profits may be based on India profits and not global profits.</i>



Sr. No	Section	Issue/Justification	Suggestion
		arise whether book profits should be computed based on global profits or only with regard to India profits.	
124.	Tax Credit u/s 115JAA & 115JD read with section 115JB & 115JC	Minimum Alternate tax and Alternate Minimum tax is paid u/s 115JB & 115JC of the Act respectively. The amount of tax credit so determined under section 115JAA and 115JD is carried forward and set off in accordance with the provisions of these sections but such carry forward is not allowed beyond 15th assessment year immediately succeeding the assessment year for which tax credit becomes available. In case of an assessee who is eligible to claim the exemption u/s 10A to 10C or deduction u/s 80-IA to 80-IE, the said amount of tax credit is eligible for set off only after the expiry of the 10th Assessment year (in most cases) in which such exemption and deduction is allowed respectively. However, in effect the purpose of making available the tax credit gets defeated, as tax credit is not utilized by those companies up to 10 assessment years and carry forward of the Income tax paid on book profit under this section, is not allowed to be set off beyond 15th assessment year immediately succeeding the assessment year for which tax credit become available.	<i>It is suggested that for setting off of MAT credit, a fresh period of 10 years be allowed after the completion of period of exemption under section 10A to 10C and deduction under section 80-IA to 80-IE under normal provisions of the Act provided it is the exclusive business of the assessee.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
125.	Section 115JB - Minimum Alternate tax	It appears that Disallowance/Adding back of provision for diminution in value of any asset for computation of "book profit" is to be made in case of every class of company {clause (i) to Explanation 1 to section	<i>Clause (b) and (i) of Explanation 1 to section 115JB may be amended as follows-</i> <i>"(b) the amounts carried to any reserves, by</i>



Sr. No	Section	Issue/Justification	Suggestion
		115JB(2)}. However, in case of banking companies, the Government may reconsider applicability of the disallowance provision. This is because of the fact that in computation of business income under normal provision, deduction in respect of provision for bad debts is allowed under express provision contained in section 36(1)(viiia) subject to the limit specified in the said section. If provision for bad debts is allowed as deduction in computation of business income under normal provision, there does not appear to be any cogent reason for disallowing the same in computation of "book profit" under section 115JB. Similarly, any special reserve created in accordance with the provisions of section 36(1)(viii) also does not require any disallowance in computation of book profit under section 115JB.	<i>whatever name called [other than a reserve specified under section 33AC and a reserve created and allowed in accordance with the provisions of section 36(1)(viii)]</i> <i>....</i> <i>(i) the amount or amounts set aside as provision for diminution in the value of any asset (other than provision for bad and doubtful debts allowed as a deduction under section 36(1)(viiia))"</i> (SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)
126.	Rationalization of provisions of MAT for short term capital gains	As per section 115JB, where in case of a company, the income tax payable on the total income as computed under the Income-tax Act in respect of any previous year is less than 18.5% of its book profit, then such book profit shall be deemed to be the total income of the assessee and the tax payable on such total income shall be the amount of income tax at the rate of 18.5%. This income tax is further to be enhanced by surcharge (as applicable) and education cess(es) (@ 3%).	<i>It is suggested that in case of companies under the MAT regime, income tax liability for short term capital gains be the lower of the following:</i> <i>1) Income tax computed as per provisions of Section 111A of the Income-tax Act.</i> <i>2) Income tax computed as per provision of section 115JB of Income-tax Act.</i>



Sr. No	Section	Issue/Justification	Suggestion
		However, specified short term capital gains are taxable @ 15% under section 111A. Due to this, companies under the MAT regime may not be able to get away with a lower tax rate of 15% on Short term capital gains.	
127.	Section 115JB – MAT implications for Ind AS compliant companies	Under Ind AS, prior period adjustments are not reflected in the financials in which error is discovered but earlier period financials are restated to which such errors pertain. There could be an issue if the return of income for such earlier year has already been filed and due date of filing revised return has lapsed.	<i>It is suggested that a specific provision for revising return in the aforesaid situation may be provided or prior period adjustments may be allowed to be adjusted from book profit in the year in which errors are discovered</i>
128.	Clarity on MAT – u/s 115JB	The computation of book profit under section 115JB is a complicated and vexed issue with diverse interpretations possible on various issues. These issues need to be clarified to reduce litigation before the appellate authorities, which is one of the aims of the Government. The issues in question are as under: 1) Meaning of the terms “loss brought forward or unabsorbed depreciation” and “as per books of accounts – i.e. whether the intention is to prepare a separate computation for the purposes of computing brought forward losses, as explained in Circular 495 (dated 22 September 1987) which was in the context of section 115J of the Act.	<i>Most of the aforesaid questions are directly or indirectly answered by Circular 495 dated 22.9.1987 w.r.t. erstwhile section 115J. It may be clarified that the said Circular is also applicable to current provisions of section 115JB as well.</i> <i>For issues which are not covered by the said Circular, clarifications may be issued to explain the legislative intent.</i>



Sr. No	Section	Issue/Justification	Suggestion
		2) The point of time at which loss or unabsorbed depreciation should be considered – whether at the end of the previous year or at the end of the relevant previous year in which the loss or unabsorbed depreciation arose? 3) Is book loss of a year to be set-off against profits of earlier years? 4) If book loss of a year is set-off against reserves, will it be available for set-off? 5) Is the book loss of an amalgamating entity eligible for set-off by the amalgamated entity? 6) Whether the brought forward loss and unabsorbed depreciation is to be aggregated separately first and then these aggregates are to be compared to determine which one is lower?	
129.	Proposed amendment to Section 115JB(2A) of the Act	MAT-Ind AS Committee placed its report dated 17 June 2017 providing recommendations on proposed amendments to the provisions of the Section 115JB of the Act in respect of Ind AS Compliant Companies. The Committee observed that in order to have parity between the transition adjustments and ongoing adjustments on account of items adjusted to “Other Equity”, an amendment is required to be made with effect from 1 April 2017 i.e. the	Based on the proposed carve outs in the Committee Report dated 17 June 2017, the following adjustments to any item of “Other Equity” should also be excluded from addition / deletion from the book profit: Capital reserve in respect of Business combinations in respect of any other



Sr. No	Section	Issue/Justification	Suggestion
		effective date of the amendment made by the Finance Act 2017. As per the proposed amendment to Section 115JB of the Act, all amounts credited or debited during the previous year to any item of "Other Equity", excluding the carve outs as mentioned therein, would need to be added / reduced in computing the book profit of the Company for MAT purposes. Issues (i) One of the carve outs on which MAT would not be applicable is "capital reserve" in respect of Business combinations of entities under common control as per Appendix C of IndAS 103. However, capital reserve which could arise in respect of any other Business combinations under IndAS 103 would fall under the ambit of MAT. For example, any re-structuring involving merger of a target NPA entity (distressed acquisition or bargain purchase) with the acquirer (unrelated) may qualify as a Business Combination resulting in creation of capital reserve (being the difference in the fair value of fixed assets acquired less the value of shares issued by the acquirer). Such capital reserve would need to be added to book profits of the Company and hence, subject to MAT. It is recommended that Capital reserve arising in respect of any other Business combinations as per IndAS 103 should be excluded from the "Other Equity" for the Book Profit computation.	Business combinations as per Ind AS 103. Securities premium reserve arising on issuance of shares or securities in compliance with the provisions of the Companies Act, 2013. Adjustment to any item of "Other Equity" on account of capital reduction of share capital of a company.



Sr. No	Section	Issue/Justification	Suggestion
		(ii) Another proposed carve out is “securities premium collected in cash and cash equivalents”. There is express definition of what constitutes “cash and cash equivalents” but in normal parlance it means Cash and cash equivalents comprise cash in hand, demand deposits with banks/corporations and short term highly liquid investments (original maturity less than 3 months) that are readily convertible into known amount of cash and are subject to an insignificant risk of change in value. However, in case where the securities premium reserve arises on account of a re-structuring exercise e.g. on conversion of loans or compound instruments into shares or securities at fair market value, or on business combinations, such securities premium would be added to book profits and hence, subject to MAT. It is recommended that Securities premium reserve arising on issuance of shares or securities in compliance with the provisions of the Companies Act, 2013 should be excluded for computation of Book Profit. (iii) In continuation of the example cited in (ii) above, there could be a scenario where an entity proposes to re-structure its financial statement by reducing its equity share capital either for re-alignment of shareholding (e.g. reduction of promoter's	



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		equity on settlement with lenders under applicable RBI guidelines) or to adjust such share capital against a debit balance in the Retained Earnings. Such credit to "Other Equity" or "Retained Earnings" on Capital Reduction of share capital would be liable to be added to book profits of the Company and subject to MAT. It is recommended that Adjustment to any item of "Other Equity" on account of capital reduction of share capital of a company should be excluded for computation of Book Profit.	



CHAPTER XII-BA

SPECIAL PROVISIONS RELATING TO CERTAIN PERSONS OTHER THAN A COMPANY



Detailed Suggestions

Sr. No	Section	Issue/Justification	Suggestion
130.	Section 115JD - Tax Credit in case of succession	Section 115JD provides for tax credit in respect of alternate minimum tax. The provisions of section 115JC are applicable to persons other than a company i.e. individual, HUF, Partnership firm including LLPs, AOPs etc. In this era of growth, the possibility of reorganisation of the assessee liable to pay AMT cannot be ruled out. A proprietorship firm eligible to claim credit under section 115JD can convert itself into a Partnership firm or a LLP or AOP or any other person. However, as per the present provisions, once it will convert itself, the successor shall not be liable to claim AMT credit.	<i>It is suggested that Section 115JD be amended to allow carry forward of AMT credit in the hands of the successor entity for remaining/unexpired period of credit.</i>



CHAPTER XII-D

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
131.	Tax on distributed profits of domestic companies - Section 115-O(1A)	- As per the provisions of Section 115-O of the Act, the domestic holding company will not have to pay DDT on dividends paid to its shareholders to the extent it has received dividends from its subsidiary company on which DDT has been paid by the subsidiary. The current provisions give relief in respect of dividend received from only those companies in which the recipient companies are holding more than half of the nominal value of equity capital. - Section 115-O of the Act also provides that the domestic holding company will not have to pay DDT subject to the condition that the dividend should be received from a subsidiary, where such subsidiary is a foreign company, and the tax is payable by the Indian company under Section 115BBD of the Act on the dividend received from the foreign company. Section 115BBD of the Act prescribes the tax to be payable @ 15 per cent in case where the dividends are received by an Indian company from a specified foreign company in which the Indian company holds 26 percent or more of the nominal value of the equity share capital. The condition of more than 50 percent holding in Section 115-O of the Act needs to be realigned with the condition of 26 percent holding in case of Section 115BBD of the Act to enable less than 50 percent shareholding entities also to	<i>It is suggested that all dividends on which DDT has been paid, be allowed to be reduced from dividends irrespective of the percentage of equity holding keeping in mind that investment companies which do not necessarily own/have subsidiaries as they invest in various companies in the open market, be also made eligible for such benefit.</i> <i>The proviso to Section 115-O(1A) of the Act provides that the same amount of dividend shall not be taken into account for reduction more than once. The levy of DDT at multiple levels has been a subject matter of grievance. A part of this issue has been resolved by providing that if a holding company receives dividend from its subsidiary, a further distribution of dividend by the parent will not attract levy of DDT. Promoter holdings in operating companies are not necessarily in a single parent. Also, irrespective of</i>



Sr. No	Section	Issue/Justification	Suggestion
		avoid the multiple taxation on dividends distributed. - The condition that the dividend should be received from a subsidiary is in a sense restrictive in as much as a company is stipulated to be a subsidiary of another company, if such other company, holds more than half in nominal value of the equity share capital of the company. The said condition is unlikely to be fulfilled by majority of the promoter companies which hold investment in operating companies listed on stock exchanges. Even shareholders of joint venture companies are impacted by the above restrictions. In both the scenarios, since the operating / joint venture company i.e. the company declaring the dividend is not a subsidiary of any company, the first condition i.e. dividend should be received from a subsidiary company is never fulfilled and accordingly when the promoter company / shareholder of joint venture company declares dividend to their shareholders, it cannot deduct the dividend so received from the operating / joint venture company for the purpose of payment of DDT. - DDT is currently payable at the basic rate of 15 per cent. Further, dividends distributed by domestic companies and mutual funds will be grossed up for the purpose of computing DDT,	<i>whether there exists a parent-subsidary relationship, a tax on dividends which have already suffered levy of DDT amounts to multiple taxation which should be avoided. It is therefore suggested that dividends which have suffered DDT be treated as pass through and be not subjected to levy of DDT.</i> - Further even Section 115BBD of the Act prescribes for a lower threshold of 26 per cent holding in the foreign company and the dividends received from the foreign company are to be taxed at 15 per cent. Thus, the said threshold should also be reduced in case of Section 115-O of the Act from 50 per cent to a lower limit to enable avoidance of multiple taxation of the same dividends received by the holding companies. - The tax rate of DDT is suggested to be reduced to 10 per cent from the current effective rate of about 20 per cent (after including grossing-up



Sr. No	Section	Issue/Justification	Suggestion
		translating into an effective tax rate of about 20 per cent (after the levy of surcharge of 12 per cent and cess of 3 per cent). The Memorandum explaining the provision of the Finance (No.2) Bill, 2014 states that prior to introduction of DDT, the dividends were taxable in the hands of the shareholder. However, after the introduction of the DDT, a lower rate of 15 per cent is currently applicable but this rate is being applied on the amount paid as dividend after reduction of tax distributed by the company. Therefore, the tax is computed with reference to the net amount. In order to ensure that tax is levied on proper base, the amount of distributable income and the dividends which are actually received by the shareholder of the domestic company need to be grossed up for the purpose of computing the additional tax. The above memorandum appears to be contrary to the speech of the Finance Minister while introducing DDT in the Budget of 1997-98 stated as follows: “Some companies distribute exorbitant dividends. Ideally, they should retain the bulk of their profits and plough them into fresh investments. I intend to reward companies who invest in future growth. Hence, I propose to levy a tax on distributed profits at the moderate rate of 10% on the amount so distributed. This tax shall be an incidence on the company and shall not be	<i>of the dividend).</i> <i>To incentivise the investment in infrastructure sector, it is suggested that DDT on industrial undertakings or enterprises engaged in infrastructure development, eligible for deduction under Section 80-IA, may be abolished. It is also recommended that further exemption from DDT be granted to the ‘infrastructure capital company/fund’ with the condition that it invests the dividend received from its subsidiary in the infrastructure projects.</i> <i>The Ministry of Commerce and Industry (Department of Commerce) has recommended the restoration of original exemption from MAT and DDT to SEZ developers and units. In line with these intentions of the Government and to attract more investment in the SEZs, DDT on SEZ developers and units may be abolished.</i>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		passed on to the shareholder'. Thus, the then moderate rate of 10 per cent has almost doubled with an effective rate of DDT resulting to about 20 per cent. • The earlier DDT rate of 10 percent was comparative in line with the rate of TDS on dividends in most Indian and international tax treaties. The increased basic DDT rate of 15 per cent (effective rate of about 20 per cent) reduces the dividend distribution ability of domestic companies and the uncertainty with respect to its credit in overseas jurisdictions impacts the non-resident shareholders adversely. • Currently, DDT is also levied on undertakings engaged in infrastructure development which are eligible for tax benefit under Section 80-IA of the Act. This is detrimental to the growth of infrastructure facility in India. Further, the Finance Act, 2011 has also burdened the SEZ developers by including them in the scope of DDT.	



CHAPTER XII-DA

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



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
132.	Section 115QA – Effect on foreign investments	As per section 115QA of Income-tax Act 1961, (Chapter XII-DA), in the case of distribution of income by the unlisted company on Buy back of shares the law casts an obligation on the company to pay additional income tax @20% on the distributed income in addition to the corporate tax. In the case of foreign investor, the tax of 20% becomes payable even though the amount received by him in foreign currency works out to less than the amount which was brought in at the time of initial investment. To elaborate, the following illustration has been given: 1. Amount invested by foreign investor in unlisted company = USD 1 million 2. Amount for which shares were issued (Exchange rate USD 1 = INR 40) = INR 4 Crores 3. No. of shares issued @10 per share = 40,00,000 4. No. of Shares bought back by the company (25% of share issued) 10,00,000 5. Amount paid to foreign investor (buy back price INR 12.50 per share) = INR 1,25,00,000 6. Amount received by foreign investor {USD 1 = INR 60} = USD 208,333 7. Loss to foreign investor (i.e. 250,000- 208,333) = USD 41,667	<i>In view of the concerns faced by foreign investors after introduction of section 115QA, suitable amendments may be carried out in the Income-tax Act, 1961 so that foreign investors do not have to pay tax when their holding results in losses only due to foreign exchange fluctuation.</i>



Sr. No	Section	Issue/Justification	Suggestion
		8. Additional tax payable by the company(125,00,000–100,00,000)*20% = INR 500,000 Tax to be paid by the company on Rs. 25,00,000 is the final tax in addition to corporate tax and the amount of tax so paid is nothing but tax paid by the foreign investor. The foreign investor is thus required to pay tax even when he makes losses. Private equity investor who had invested in India are facing double concern - firstly in the form of sharp depreciation in Indian Rupee and secondly in the form of tax amendment in the form of section 115QA. In this connection, it would be worthwhile to say that distributable income for foreign investor shall be worked out by making the foreign currency adjustment as per the provisions which exists in section 48 of Income-tax Act, 1961 used for computing capital gains, and tax should be levied only on the excess of amount received by investors over the amount brought in at the time of investment.	
133.	Section 115QA - Rules prescribed vide Notification no. 94/2016 dated 17.10.2016 for determining the amount received by the company for issue of shares – Rules to be	As per the amendment to Explanation (ii) to section 115QA(1), (effective from 1.6.16), consideration received by company on issue of shares to be bought back is to be determined as per the Rules to be prescribed. Thereafter, Notification No 94/2016, dated 17.10.2016 inserted Rule 40BB to specify rules pertaining to amount	<i>It is suggested that it may be explicitly provided that the specified rules, notified via Notification No 94/2016, dated 17.10.2016, shall be applicable only for computing consideration received on issue of shares in respect of buy back</i>



Sr. No	Section	Issue/Justification	Suggestion
	<i>applicable for buy-back effected on or after 01.06.2016</i>	received by the company in respect of issue of share applicable w.r.e.f. 1.6.2016. An issue arises as to whether these rules can be applied only for buy-back of shares taking place after 1st June 2016, or whether the same can be applied even for buy-back of shares prior to 1st June 2016.	<i>which takes place on or after 1st June 2016. Further, necessary provision may be incorporated so that the cost paid for intermediate transfers between the shareholders post issue of share by the company is reduced for the purpose of calculating the buy-back tax.</i>



CHAPTER XII-EA

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME BY SECURITISATION TRUSTS



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
134.	Section 115TCA - Tax on income from Securitisation Trust – Tax Treatment in respect of distributions in April and May 2016 may be clarified	The Finance Act, 2016 inserted section 115TCA to provide for transition of securitisation trusts from distribution tax regime to complete pass through regime (with TDS on distributions). However, the cut-off date between old and new regime is not clear. Distribution Tax applies for distributions upto 31 May 2016 whereas new regime for complete-pass through (with TDS) applies from A.Y. 2017-18. This raises ambiguity on whether distributions made between April, 2016 to May, 2016 are covered under old regime or new regime.	<i>It is suggested that the new regime (section 115TCA) may be made applicable for distributions on or after 1st June 2016.</i>



CHAPTER XII-EB

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



Sr. No	Section	Issue/Justification	Suggestion
135.	Sections 115TD to 115TF – Special provisions relating to tax on accreted income of certain trusts and institutions – Issues to be addressed	The Finance Act, 2016 inserted a new Chapter XII-EB to provide for levy of additional income tax in case of conversion into, or merger with, any non-charitable form/entity or on transfer of assets of a charitable organisation on its dissolution to a non-charitable institution. However, sub section (3) deems such conversion to have taken place if registration granted to a trust under section 12AA is cancelled. In other words, the process of 'conversion' includes a case where registration of charitable trust is cancelled under section 12AA. There may be host of grounds including inadvertent defaults of non-compliance with section 13(1) which can be a ground for invoking cancellation under section 12AA. This neither indicates intent to convert property into a non-charity nor a case where the charitable objects are abandoned. In fact, the order cancelling registration under section 12AA is appealable and there is a possibility of reversal of such order at the appellate stage. Further, sub section (5) requires payment of tax within fourteen days of the cancellation of registration under section 12AA, which may cause hardship in genuine	a. <i>The provisions of Chapter XII-EB be appropriately aligned with the intent expressed in the Explanatory Memorandum i.e., to levy exit tax only in case of voluntary wind-up of activities or dissolution or merger with charitable/non-charitable institutions or conversion of charitable institution into non-charitable institution.</i> b. <i>The amount on which tax has been levied in an earlier year due to non-compliance of the provisions of section 11 to 13 should not be included once again while computing accreted income for levy of exit tax, since the same would result in double taxation.</i>



Sr. No	Section	Issue/Justification	Suggestion
		cases. There are a number of judgements where the orders of cancellation of registration have been struck down subsequently in appellate proceedings. In such circumstances, requiring the trust to pay the tax and interest, when an appeal is pending, may not be justifiable. The levy of exit tax may result in double taxation in cases where a whole or part of the amount, may have been assessed to tax in earlier years. For instance, trust may have suffered tax on account of non-compliance of provisions of section 11 or section 13. Accordingly, the amount on which tax has been levied in an earlier year should not be included once again while computing accreted income for levy of exit tax.	
136.	a) Tax on accreted income - Section 115TD (1)(b) – merger of two trusts / organisations	a. One will appreciate that entire scheme of Income tax is based on Real income theory. b. Tax on accreted income is payable even if entity is merged with other entity which is registered u/s 12AA but whose objects are not similar. c. Further, the term “similar object” is subjective and prone to litigation. d. Provisions of section 115TD will apply even if a charitable institution transfers its assets to an institution substantially financed by government or which has turnover not exceeding the specified limit.	<i>It is suggested that the existing clause (b) be substituted by the following clause:</i> <i>“(b) merged with any entity other than an entity which is a trust or institution registered under section 12AA;”</i>



Sr. No	Section	Issue/Justification	Suggestion
		e. Said provisions will apply even if a charitable institution transfers its assets to an institution which is approved by Charity Commissioner under Maharashtra Public Trust Act, 1950. These provisions create a charge without considering practical and real difficulties.	
	b) Tax on accreted income - Section 115TD(1)(c) – time limit for transfer of assets to any other trust or institution	Time limit of 12 months as envisaged in section 115TD(1)(c) may not be enough for the trust to comply with, in some cases due to various genuine reasons.	<i>Appropriate provisions may be made which would empower Pr. CIT/CIT to extend this period.</i>
	c) Section 115TD(4) – Trust to pay tax on accreted income even though it is not otherwise required to pay income-tax	a. The balance sheet approach envisaged in section 115TD may result in taxation of income which has legitimately enjoyed exemption in earlier years. b. It may result in taxing an amount which was always eligible or entitled to an exemption. The proposed suggestion would ensure that only the following assets would be liable to accreted tax: (1) assets acquired out of non-agricultural income which is otherwise exempt, (e.g. dividend income, etc.); (2) assets acquired out of the basic accumulation of 15% of income; (3) assets acquired out of corpus donations exempt under section 11(1)(d);	<i>It is suggested that provisions of section 115TD may not apply to the assets generated out of specified income on which exemption was not claimed.</i>



Sr. No	Section	Issue/Justification	Suggestion
		(4) assets acquired out of bequests; (5) assets acquired out of income below exemption limit; (6) assets acquired out of business income on which tax is paid under section 11(4A); (7) assets acquired out of income, taxed upon application of first proviso to section 2(15); (8) assets acquired out of income which has suffered tax on account of application of section 13; (9) agricultural land.	
	d) Recovery provisions on trustees etc. – Section 115TD(5)	Section 115TD(5) reads as follows: "(5)The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from,-..." The term 'principal officer' is very widely defined in section 2(35) as follows- "principal officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means— "(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or (b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;"	Applicability of recovery provisions on the trustees etc. should be made only if it is proved that non-recovery is attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the charitable institution or trust.



Sr. No	Section	Issue/Justification	Suggestion
		The AO can consider almost any person connected with the management as the principal officer of the institution. It seems that primary liability to pay tax is on principal officer or the trustee and if they don't pay then that would be of Trust.	
	e) Section 115TD(5) - Period of 14 days insufficient	Section 115TD(5) reads as follows: <i>“(5) The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from,---</i> “ ...“ a. Time limit is too short to pay especially when institution is required to dispose of its assets to make payment. b. It takes longer time to take permission from Charity commissioner appointed under Maharashtra Public Trust Act, 1950. c. Further when capital assets are sold, proceeds would also be subject to capital gains tax. As per section 115TD(5), Tax need to be paid within a period of 14 days.	<i>Time limit may be suitably modified /increased.</i>



CHAPTER XII-FB

SPECIAL PROVISIONS RELATING TO TAX ON INCOME OF INVESTMENT FUNDS AND INCOME RECEIVED FROM SUCH FUNDS



Detailed Suggestions

Sr. No	Section	Issue/Justification	Suggestion
137.	Section 115UB – Taxation of income of Investment funds - Clarity required on taxation of Category III AIF	Several Category I and II Alternative Investment Funds (AIFs) are registered with SEBI. With effect from Financial Year (FY) 2015-16, the taxability of the income earned by AIFs is governed by a special tax regime as provided under Section 115UB of the Income-tax Act, 1961 (the Act), which is summarised as follows: - Any income (other than business income) earned by a SEBI registered Category I and II AIF, is exempt from tax in the hands of the AIF under Section 10(23FBA) of the Act. Such income shall be taxable directly in the hands of the investors of the AIF under Section 115UB of the Act. - The investors shall be chargeable to tax in the same manner as if it were the income accruing or arising to, or received by, such investor had the investments, made by the AIF, been made directly by such investor. Income taxable in investors' hands shall be deemed to be of the same nature and proportion as in the hands of the AIF.	<i>It is suggested that clarity may be provided on taxation of Category III AIF under section 115UB.</i>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		Further, in terms of Section 115UB(2) of the Act, in case there is a loss at the fund level (i.e. current loss or loss which remained to be set off), such loss shall not be allowed to be passed through to the investors but would be carried forward at AIF level to be set off against income of future years in accordance with the provisions of Chapter VI of the Act. While the said section provides methodology of taxing of AIF Category I and II, however, it is silent regarding the taxability of AIF category III.	



CHAPTER XIII

INCOME TAX AUTHORITIES



**PART C-POWERS
DETAILED SUGGESTIONS**

Sr. No	Section	Issue/Justification	Suggestion
138.	Section 132B rws 245C(1) - Application of seized or requisitioned assets	After search, as per amended provision by the Finance Act 2010, where assessee files application with Settlement Commission for settlement of his cases, the cash seized during search be permitted to be adjusted against the tax due as per the offer made by the assessee in the settlement application. It may be mentioned that as per the provision contained in this regard, the assessee has to make additional disclosure of income in the settlement petition and pay additional tax of Rs.50 Lakhs before filing the application with the Settlement Commission.	<i>Since cash is seized at the time of search and lying in PD account of CIT, such cash after adjusting existing tax liabilities, may be permitted to be adjusted against the tax due as per settlement petition. Suitable amendment / instruction are required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>
139.	Section 132(8A) - Immunity from Penalty and Searches	Considering application of section 132(3) read with section 132(8A), search in actual practice is kept open for a period of 60 days in case no incriminating evidence is found against the assessee or the assessee has not surrendered any unaccounted/concealed income. This period of 60 days is a very long period and frivolous additions made during such period are generally knocked down in appeals. This practice only leads to more litigation and thereby leads to wastage of precious resources of both assessee and department. It also hampers the ease of doing business which is high on the agenda of the current government.	<i>It is suggested that the said period of 60 days specified in section 132(8A) be reduced so as to avoid genuine hardship caused to the assessee in carrying on his business.</i>



Sr. No	Section	Issue/Justification	Suggestion
140.	Section 132(1), 132(1A) and 132A(1) – Reason to believe to conduct a search, etc. not to be disclosed – Request to bring back erstwhile provisions to reduce undue hardship to genuine assessee	The Finance Act, 2017 has inserted an Explanation to section 132(1), 132(1A) and 132A(1) to declare that the 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal. The said amendment would lead to unnecessary harassment of taxpayers.	<i>It is suggested that the requirement of 'reason to believe' or 'reason to suspect' may be retained in these sections to reduce undue hardship on genuine assessee. Such reasons may also be permitted to be disclosed to appellate authorities.</i>
141.	Section 133C- Power to call for information by prescribed income-tax Authority	Section 133C is inserted vide Finance (No. 2) Act, 2014 to enable the prescribed Income tax authority to verify the information in its possession relating to any person. The said authority, may, issue a notice to such person requiring him, on or before a date specified therein, to furnish information or documents, verified in the manner specified therein which may be useful for, or relevant to, any enquiry or proceeding under the Act. Hardships Section 133(6) of the Act gives identical power to the authorities for seeking information etc relevant to any enquiry or proceedings. Where no proceedings are pending, information can be sought with	<i>It is suggested that:</i> <i>a)Section 133C may be reconsidered, or</i> <i>b)Section 133C must be preceded by a satisfaction,</i> <i>c)This section may be amended to require approval of a higher authority and recording of satisfaction, before invoking the power, and</i> <i>d) The assessee should not be required to attend office of the Assessing Officer in person and should be permitted to file the information by post/electronic form.</i>



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		the approval of a higher authority. The existing section 133(6) thus gives power to the authorities for seeking information etc but with sufficient safeguards. Section 133C seeks to grant the same power of enquiry etc to any Income-tax authority without seeking any sanction or approval from a higher authority. This provision will provide unbridled powers in the hands of the authorities with probability of abuse.	



CHAPTER XIV-

PROCEDURE FOR ASSESSMENT



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
142.	Section 139 - Enlarging the scope	The scope of filing return of income should be widened.	<i>The scope of filing return of income should be widened so as to include in its ambit the persons entering into the following transactions:</i> ➤ <i>A person having foreign tour twice in a block of three years or thrice in a block of five years should file his/her return of income mandatorily.</i> ➤ <i>A person having huge agriculture income or is in a possession of large agriculture land should also come within a purview of return of income.</i> ➤ <i>A person paying electricity expense above certain limit (say Rs. 60000 pa)</i> ➤ <i>A person paying school fees above specified limit (say Rs. 72000 pa) should also come under the scope of return of income.</i> ➤ <i>If the aggregate amount deposited in the current account exceed certain limit (say Rs. 30,00,000) then provisions of filing of return should apply to that person mandatorily.</i> ➤ <i>The person has AIR/SFT transaction should also come under</i>



Sr. No	Section	Issue/Justification	Suggestion
			<i>the scope of return of income, and if he/she does not file return of income then penalty u/s 271F/234F should be levied instead of giving notice for filing return of income.</i> ➤ <i>Cash withdrawals from saving bank account above certain limits should also take place in the annual information return/statement of financial transaction.</i> (SUGGESTION TO WIDEN THE TAX BASE)
143.	Section 139(4) and 139(5) – Time limit for filing belated return reduced - Reference to return in response to section 142(1) may be included in Sections 139(4) and 139(5)	Prior to amendment made by the Finance Act, 2016:Section 139(4) provided that a person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Similarly, Prior to amendment made by the Finance Act, 2016, Section 139(5) provided that if any	<i>It is suggested that-</i> <i>(i) Reference to sub-section (1) of section 142 may be reinstated in new section 139(4) i.e., enabling provision to be made for filing of belated return in response to notice under section 142(1).</i> <i>(ii) Section 139(5) may be amended to provide for revision of return filed in response to notice under section 142(1), in line with the intent expressed in the Explanatory Memorandum.</i>



Sr. No	Section	Issue/Justification	Suggestion
		person, having furnished the return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142 discovers any omission or any wrong statement therein, he may furnish a revised return at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier. The Finance Act, 2016 has substituted section 139(4) & 139(5) as follows: <i>“(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.”;</i> <i>“(5) If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.”;</i> Reference to return filed in response to section 142(1) is missing in new sub-	



Sr. No	Section	Issue/Justification	Suggestion
		section (4) and sub-section (5) of section 139. As per the Explanatory Memorandum to the Finance Bill, 2016, the return which can be revised under section 139(5) also includes a return furnished in response to notice issued under sub-section (1) of section 142. However, reference to notice under section 142(1) does not find place in the new sub-section (5) in the Finance Act, 2016.	
144.	Section 139(5) – Reduction in time limit for filing revised return – Request to bring back erstwhile time limit for filing of revised tax return at least in cases of claim of foreign tax credit	The Finance Act 2017 amended section 139(5) to provide that the time for furnishing of revised return shall be available upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier. This particularly impacts claims for any Foreign Tax Credit (FTC) in respect of the taxes paid by the individual assessee(s) in the overseas tax jurisdiction. Generally the information/ final payment of foreign taxes/ tax return is unlikely to be available within the timeline for filing the revised tax return i.e. by the end of the relevant assessment year.	<i>Keeping in mind the aforesaid hardship of double taxation which may arise to the individual assessee as he may not be able to claim foreign tax credit in the absence of overseas income-tax return, there is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Therefore, the earlier time limit may be brought back at least in respect of revision required for claiming foreign tax credit.</i>



Sr. No	Section	Issue/Justification	Suggestion
		As an example, USA follows calendar year as their tax year and the first due date of filing a USA income-tax return is April 15th of the following calendar year, meaning thereby, the USA income-tax return for calendar year 2018 will be required to be filed by 15th April, 2019. In a case of Indian income-tax return for tax year 2017-18, the due date to file a revised return as per the said amendment will be 31st March, 2019. In the above situation, the assessee may not have his final tax return available with him till 15th April 2019, hence, such assessee will not be able to claim the FTC of the final USA taxes paid by him in his Indian income-tax return as he may not have the final USA tax details by 31 March 2019.	
145.	Special audit - Section 142(2A)	Section 142(2A) was amended by Finance Act, 2013 apparently to amplify the scope of special audit i.e. the Assessing Officer now has the power to direct a special audit, having regard to volume of transactions, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee. Till the aforesaid	<i>It is suggested that :</i> <i>a) the amendment made by Finance Act, 2013 be reconsidered and withdrawn.</i> <i>b) The provision prior to amendment included within its ambit all cases of complexities and there is absolutely no need to give further powers to the AO to order a Special Audit on the reason such as doubts about the correctness of</i>



Sr. No	Section	Issue/Justification	Suggestion
		amendment, the “nature and complexity of the accounts” was the necessary and sufficient criterion for directing special audit. The amended section 142(2A) appears to have the effect of enlarging the scope of special audit considerably. The scope of reasons for invoking the powers under section 142(2A) to direct the assessee to get the accounts audited by an accountant have been substantially increased. Empowering the Assessing Officer to invoke tax audit under section 142(2A) merely due to the “volume of accounts” or “multiplicity of transactions” may have the effect of bringing each and every case within the ambit of special audit in case of large organisations. Each and every gas station, share broker, retailer, agency business and the like may fall within the purview of this section solely on account of the “volume of accounts” or “multiplicity of transactions”. Also, as these expressions are highly subjective, they are prone to adoption of very low threshold to trigger the application of this provision. This may cause undue hardship to even those	<i>accounts and multiplicity of transactions etc.</i> <i>The amendment in section 142(2A) vide the Finance Act, 2013 needs to be withdrawn to ensure that the wide powers entrusted upon the AO are not misused by way of directing special audit in a routine manner thereby defeating the very purpose.</i> (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)



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



Sr. No	Section	Issue/Justification	Suggestion
		to special audit since it gives them an extended time for completing their assessment.	
146.	Section 142A - Estimation of value of asset by Valuation Officer	As per the provision prior to Finance (No. 2) Act, 2014 contained in section 142A, the Assessing Officer may, for the purpose of making an assessment or re-assessment require the Valuation Officer to make an estimate of the value of any investment, any bullion, jewellery or fair market value of any property. On receipt of the report of the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard take into account such report for the purpose of assessment or re-assessment. Section 142A did not envisage rejection of books of account as a pre-condition for reference to the Valuation Officer for estimation of the value of any investment or property. Further, section 142A does not provide for any time limit for furnishing of the report by the Valuation Officer. As per the amended section 142A vide Finance (No. 2) Act, 2014, the Assessing Officer may, for the purpose of assessment or re-assessment, refer any asset, property or investment to a	<i>Keeping in view the settled law on the subject, the legislature must specifically provide that satisfaction may be recorded before making any reference to the Valuation Officer.</i> <i>Alternately, sanction of a higher authority must be taken before any reference is made by the Assessing Officer</i>



Sr. No	Section	Issue/Justification	Suggestion
		Valuation Officer, necessary for estimating its value. The Assessing Officer is not required to record any satisfaction about the correctness or completeness of the accounts of the assessee. Further, the report of the Valuation Officer may be accepted after giving the assessee opportunity of being heard. Probable hardships after amendment by Finance (No. 2) Act, 2014 (a) As per the earlier section 142A, the Assessing Officer may refer to valuation for the purpose of estimating the value of any investment referred to in section 69 or 69A or 69B or 56(2). The law, as far as the trigger for valuation is concerned, was settled and permitted. The Assessing Officer was to resort to valuation only after he was satisfied that the books of account were not correct or were incomplete. Henceforth, as per the amendment made, the Assessing Officer need not record any reason for making a reference. In fact, as is the experience, the Assessing Officer may even fear an audit enquiry or objection if	



Sr. No	Section	Issue/Justification	Suggestion
		they do not refer cases for valuation. (b) The amended section may open flood gates to valuation in each and every case resulting in unnecessary litigation and inappropriate use of valuable resources of the Department. (c) The Valuation Officer will become yet another authority who will sit over judgements on what should be the value of any property. As per the discretion available with him for valuation, it may also result in abuse. (d) The power and scope of reference to a Valuation Officer has been extended to any asset, property or investment, thus giving vast powers in the hands of the assessing authority without any check.	
147.	Section 143 - Need to create pre-assessment filters	The whole process of assessment and appeals needs to be looked at afresh, with a view to revamp and improve the current circuitous procedure. The following may be considered from this perspective:	<i>It is suggested that:</i>



Sr. No	Section	Issue/Justification	Suggestion
		i. A system of private rulings could be introduced, whereby an assessee can seek a private ruling on the manner of taxation of a particular item of income/expenditure /transaction, before filing his return of income. The private ruling could be provided by a Zonal Committee of Chief Commissioners, and should be non-binding on the assessee. The private rulings could also be published on a no-name basis on the Income tax Department's website, which would act as a guidance for other assessees.	<i>i. A system of Private Rulings may be introduced.</i>
		ii. A system of mediation in the form of agreed assessments can be instituted, whereby a Zonal Committee of Commissioners could arrive at an agreement with the assessee as to the quantum of assessment. This agreed assessment should be binding on both the department and the assessees.	<i>ii. A system of mediation in the form of agreed assessments may be instituted</i>
		iii. A provision can be made to refer all	<i>iii. A provision may be made to refer all</i>



Sr. No	Section	Issue/Justification	Suggestion
		potentially high pitched assessments to a Committee before completion of assessment, similar to the existing local Committees for post referral of high pitched assessments. iv. International best practices in relation to assessments can be considered. Initially, assessments above a threshold or category could be made by a team consisting of the Commissioner, Additional / Joint Commissioner, Assistant / Deputy Commissioner / ITO. This will prevent unwarranted additions in assessments. Since orders would be passed by the Commissioner, appeals would lie directly to the ITAT. This would avoid the current conflict and bias arising due to appeals being decided by Commissioner (Appeals), who are Departmental Officers. The power of revision could lie with the CCIT. v. A large part of the litigation today is on	potentially high pitched assessments to a Committee before completion of assessment. iv. International best practices in relation to assessments may also be considered. v. A system of awarding costs to assessees may



Sr. No	Section	Issue/Justification	Suggestion
		account of the fact that there is no deterrent on Assessing Officers from making undue additions, as there are no legal costs of such litigation to the Department. A system of awarding costs to assessees should be introduced.	be introduced.
148.	Section 143(1) – Increase in scope of “Incorrect claim apparent from any information in the return” – sub-clause (iv) may be redrafted to include specific reference to report under section 44AB	The Finance Act, 2016 has amended the said section by inserting sub-clause (iv) to sub-section (1) of section 143 for disallowing expenditure indicated in the “audit report” but not taken into account in computing the total income in the return. Since disallowance of expenditure is expressly and exhaustively covered in the format of report under section 44AB, sub-clause (iv) needs to be appropriately redrafted to include specific reference to the report under section 44AB.	<i>It is suggested that sub-clause (iv) may be appropriately reworded to disallow expenditure indicated in the report of audit to be furnished under section 44AB but not taken into account in computing total income in the return.</i>
149.	Hardship arising out of the Apex Court's decision in Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)	a) In the case <i>Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)</i> the assessee filed its return of income for the relevant assessment year without claiming a particular deduction. Later on, it sought to claim the deduction by way of a letter addressed to the Assessing Officer. The deduction was disallowed by the Assessing	<i>Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings under section 143(1) and section 144 by methods otherwise than by way of filing a revised return.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		Officer on the ground that there was no provision under the Act to make amendment in the return of income by making an application at the assessment stage without revising the return. The assessee had relied upon the decision of the Apex Court in National Thermal Power Company Ltd. v. CIT (1998) 229 ITR 383, to contend that it was open to the assessee to raise the points of law even before the Appellate Tribunal. In that case, it was held that the Tribunal had jurisdiction to examine a question of law (raised for the first time), which arose from the facts as found by the income-tax authorities and which have a bearing on the tax liability of the assessee. The Supreme Court held that this decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. Therefore, the assessee can claim deduction only by filing a revised return. The said decision of the Apex Court has unsettled many a case law and has caused unintended hardship to the assesseees	



Sr. No	Section	Issue/Justification	Suggestion
		b) No deduction is permitted to an assessee under section 10AA and Part C of Chapter VIA if the assessee fails to make a claim in the return of income. This provision is very harsh and disentitles the assessee to legitimately claim otherwise legally allowable due to technical reasons. In many cases, failure to make claim in return may be inadvertent and mere omission. There are wide powers given to the Income tax Authorities under the Income-tax Act to reopen / review / rectify assessment if any error prejudicial to the interest of the Revenue is found. Also in the case of Goetze (India) Limited Vs CIT (284 ITR 323) the Apex Court has held that it is necessary for an assessee to revise its return of income for raising any new claim which is not raised in the original return of income.	Provisions of section 80A(5) should be modified to permit filing of new claim by the assessee in the course of assessment, even without filing of revised return of income. This will remove unintended hardship. (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
150.	Section 144C(2) – requirement of filing voluminous details within 30 days	The Assessee has to file voluminous objections in form 35A, within 30 days of receipt of the order. There is no rule to file a paper book or raise additional arguments or grounds. 30 days is very short time to compile and file before the DRP. There are many mistakes and further many arguments are also missed	Either 30 days may be increased to 60 days or alternatively Format of form 35A should be revised only to include grounds and statement of facts as were before CIT(A).



Sr. No	Section	Issue/Justification	Suggestion
		out.	
151.	Section 145(2) - Quashing of ICDS	Recently, the Hon' ble Delhi HC in its Judgement dated 8.11.2017 in the case of Chamber of Tax Consultants v. Union of India has struck down certain paras of the ICDSs to the extent as noted in the said Judgement as ultra vires the Income-tax Act, 1961. The impugned notification Nos. 87 and 88 dated 29th September 2016 and Circular No. 10 of 2017 issued by the CBDT are also held to be ultra vires the Act and struck down as such. Issues in the implementation of ICDS: • Coordination between specialised bodies set up by the Government of India It is pertinent that the notified ICDS have prescribed an approach for deriving income different from Accounting Standards (AS) and Indian Accounting Standards (Ind AS) which are global benchmarked Standards for determination of true and fair profits. This is achieved by AS/Ind AS notified by National Advisory Committee on Accounting Standards (NACAS), a body set up under the Companies Act by the Ministry of	<i>In view of aforesaid and the recent Judgement of the Hon'ble Delhi HC dated 8.11.2017, it is requested that the ICDSs should not be implemented.</i>



Sr. No	Section	Issue/Justification	Suggestion
		Corporate Affairs, Government of India. Hence, it is requested that there should be proper coordination between specialised bodies set up by the Government of India . In the absence of coordination, the gap would widen and situation would get complicated for tax payers. • Significant difference between the provisions of ICDS and Judicial pronouncements The preamble states that if there is any conflict between the provisions of the Act and the ICDS, the latter will prevail. ICDSs, at many places, differ significantly from decisions pronounced by the Supreme Court and High Courts [viz Bharat Earth Movers Ltd – 245 ITR 428 (SC); Sakthi trading Company – 250 ITR 871 (SC); East Coast Construction I Ltd – 283 ITR 297 (Mad) P & C constructions P Ltd – 218 ITR 113 (Mad); East Coast Construction I Ltd – 283 ITR 297 (Mad) etc.] • Implementation of ICDS – Non-desirable - A whole new set of standards being burdensome for taxpayers and would create confusion	



Sr. No	Section	Issue/Justification	Suggestion
		Implementation of ICDS has been a matter of utmost concern not only for assesseees, chartered accountants but also the Department officials. In various representations made by ICAI, it has been respectfully submitted that a whole new set of standards would create confusion, increase complexity and drastically reduce the ease of doing business in India, which is not desirable. • No need of ICDS for Ind AS compliant companies Applicability of Ind As has tax impact only on Book Profit and not under normal tax. Section 115JB has been amended for Ind As companies and hence argument of need of ICDS for Ind As companies is not correct. With the country resounding the 'Ease of business' slogan, the emphasis needs to be laid on 'Simplification of tax laws in India'. Ease of complying with law would ensure speedy and effective justice. The notified ICDS has more questions than answers. There are apparent contradictions with the Act	



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Sr. No	Section	Issue/Justification	Suggestion
		and within itself. The attendant confusion has the power to slow down the justice which effectively translates in denial of taxpayer rights. ICDS should not obscure the original fabric of the Act. ICAI firmly believes that the principle of “ease of doing business” should be followed holistically and there should be only one set of accounting standards and different departments of the Government should work for “One Nation One Standard” like Government has created history by successfully implementing and enacting the much awaited GST law “one nation one tax” regime.	
152.	Reopening of assessment based on audit objections - Section 147	In all the cases of audit objections, the assessing officer initiates corrective steps irrespective of the fact whether the objection is valid or not in the eye of the law. Consequently the assessments are reopened by the assessing officer leading to unnecessary litigation.	<i>It is suggested that the Act be amended to atleast give power to the assessing officer to verify whether the objection is valid and sustainable or not.</i>
153.	Section 148 - Reasons for reopening to be sent along with notice for reopening of assessment	Section 147 empowers an AO to reopen an assessment if he has “reasons to believe” that income has escaped assessment. In practice, the said notice usually does not spell out the reasons in proper detail.	<i>In view of the aforesaid, It is suggested that it would be more appropriate if suitable amendments be made in section 147/148 so as to follow the procedure laid down by Hon’ble Supreme Court in GKN Driveshafts (India) Ltd. v ITO [2003] 259</i>



Sr. No	Section	Issue/Justification	Suggestion
		The said section does not have any procedural requirements, but a practice has developed and been laid down by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. v ITO [2003] 259 ITR 19 (SC) case, to be mandatorily followed while reopening assessment. Presently notice is issued under section 148. Later, the assessee has to request for the 'reasons for reopening' from the AO. Thereafter the Assessing officer provides the reasoning.	ITR 19 (SC) ruling.
154.	Section 153A and Section 271AAB – Need for effective deterrence and finality in Search Cases	a) Present scheme of administration of Search and Assessment of search cases needs to be made effective to reduce technical complexities Desirability to bring back block assessment system • Present scheme provided in section 132 read with section 271AAB and section 153A provides various different effective incidences of tax on assessee subjected to search if declaration is made during search or beyond the conclusion of search. The complexity involved be removed and single situation be provided where assessee	<i>It is suggested that the continuance of earlier block assessment procedure is desirable and would help in:</i> <i>(a) reducing controversy over the year of taxability of income;</i> <i>(b) providing suitable incentive for a person to make the necessary disclosure without indulging in litigation and</i> <i>(c) removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.</i>



Sr. No	Section	Issue/Justification	Suggestion
		be subjected to 60% tax on block assessment basis on undisclosed income in the return of income filed in response to notice for filing return after the search. This will bring in the following benefits: • With concept of block assessment, litigation as regards the year of taxability of certain income/assets discovered in search would be eliminated. • The avoidable technicality of abetted assessment would be removed. • Presently, avoidable litigation on account of jurisdiction maintainable u/s. 153A or 147 of the ACT for the particular year based on incriminating material would be avoided. • Present scheme providing reduced incidence of tax on undisclosed income during search makes assessee indulge in unethical practise and the search team susceptible to compromises due to administrative pressures to achieve targets of surrender. The focus will shift to collection of incriminating material, coordinated investigation and quality of assessment.	



Sr. No	Section	Issue/Justification	Suggestion
		If it is provided that an assessee can agree to subject the whole of sums/assets to be taxed in the block period of search at a flat rate of 60% (tax which is equal levy of 100% penalty on today's maximum marginal rate). No further proceedings/assessments would become necessary. Taking into consideration the ground reality, such voluntary compliance at every stage should be encouraged. By closing the option of voluntary compliance in search cases at higher cost, the defaulting tax payers are compelled to opt for litigation in respect of the income, which he would have otherwise readily agreed to offer for taxation. In this process he may or may not succeed but can definitely prolong the litigation.	
		b) Need to simplify penal provisions of section 271AAB Amended Section 271AAB provides for imposition of penalty @ 30% on undisclosed income found during the course of search and admitted at the stage of search subject to fulfilment of other specified conditions in section	<i>It is suggested that the provisions of section 271AAB needs to be simplified. The time of admission may not be considered for imposition of penalty amount as once admitted all culprit assesses should be treated on the same footings.</i>



Sr. No	Section	Issue/Justification	Suggestion
		271AAB(1A)(a) 60% penalty is to be imposed in other cases u/s 271AAB(1A)(b). - The above system of penalty is very complex to implement in reality. In search cases, penalty should ideally be the same irrespective of the time of admission/declaration by the culprit assessee. Assessing officers sometimes puts undue pressure on the assessee during search proceedings to extract the maximum amount of declaration. One of the reasons for the same is the pressure of target achievement by the assessing officers. - In such cases, quality of assessment suffers a lot and high pitched assessments are made unnecessarily.	
155.	Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Section 155(14) has elapsed) demanded by the Government authorities at a later date	Currently, Many government/semi-government authorities (viz. Mining Department) have been demanding TCS of earlier years for which assessments have already been completed, since they had not collected the TCS in the those relevant years. After making payments of TCS the certificates for the same are issued in current year giving reference of expenditure incurred by	<i>It is suggested that considering the hardship being faced by assesseees in respect of cases mentioned aforesaid, the department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		payer for earlier financial years. As per the provision of section 155(14) "the credit of TDS/TCS certificates is available to assessee within 2 years from the end of the assessment year in which such income is assessable" but since the payment & certificates are received after the above mentioned period, it is difficult to get the credit for the same. The demand at such later date itself is causing undue hardship to the assessee and further the credit for the same is not available to the assessee because the assessments have already been completed. Hence, department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.	
156.	Section 155(14A) - Claim of FTC pertaining to taxes which are under dispute in the foreign country – Clarification required on certain issues relating to period of limitation and documents which shall constitute evidence of settlement	Section 155(14A) provide that where the payment of foreign tax is under dispute, credit of such taxes will be available in India in the year in which the dispute is settled, on satisfaction of certain conditions. To give effect to this an enabling provision shall be inserted through which Tax Authority will rectify the assessment orders or an intimation order	<i>(i) The time limit applicable for rectification of order may be clarified. Since all the sub-sections in section 155, provide for the time limit to be applied and some of the sub-sections provide for a different time limit, it may be expressly clarified that what is the period of limitation which may apply to cases covered by the section 155(14A).</i>



Sr. No	Section	Issue/Justification	Suggestion
		and allow credit of taxes in the year in which the taxpayer furnishes the evidence of settlement of dispute and discharge of foreign tax liability. However, the said amendment does not provide for time limit within which the Assessing Officer has to rectify the assessment order. This provision only gives a reference to section 154. Section 154 provides a time limit of 4 years for reassessment, excluding anything specifically provided under section 155. Issues may arise on what is period of limitation which may apply for section 155(14A) and how it should be applied. The said provision provides that the Assessing Officer shall amend the earlier order which denied FTC, if the taxpayer, within six months from the end of the month in which the dispute is settled, furnishes to the Assessing Officer, evidence of settlement of dispute and evidence of payment of tax. Time threshold of six months from date of dispute settlement gives a very small window for taxpayers to claim the benefit for previous years, hence, giving a limited scope to the benefit.	<i>(ii) It may also be clarified that the period of limitation (e.g. if it is 4 years), should be 4 years from the end of the year in which the amended order is passed and it should not be the date of the original order. This is for the reason that if the dispute in the foreign country takes more than 4 years to get resolved and if the limitation period is considered to be 4 years from the date of the original order, the taxpayer may not get credit for taxes which he has actually paid. Such may not be the intent of the said provision.</i> <i>A similar provision is contained in Section 155(16) which provides that where the compensation for compulsory acquisition is reduced by any Court or Tribunal, then the period of limitation shall be reckoned to be 4 years from the end of the year in which the order of the Court or Tribunal is passed.</i> <i>(iii) The time limit may be amended to provide for 6 months from date of settlement of dispute or date of effect of the amended order passed u/s. 155(14A), whichever is later.</i> <i>(iv) Clarification may be provided on what is the documentation which shall</i>



Sr. No	Section	Issue/Justification	Suggestion
		It is also not clear as to what could constitute sufficient evidence on the part of taxpayers to claim the FTC benefit on dispute settlement.	<i>constitute as sufficient evidence for justifying that the dispute has been settled. This may be done by specifying an illustrative set of documents, which shall constitute as evidence for settlement of dispute.</i> <i>Illustratively the following may be considered as evidence for settlement of dispute:</i> • <i>Final assessment order/ final demand notice of the tax authority of the foreign country</i> • <i>Judgment of the Court of Law along with the final demand notice of the tax authority based on the judgement</i> • <i>Proof of payment of taxes</i> • <i>Self-declaration</i>
157.	Section 167B – Indeterminate/unknown equivalent to nil share	Section 167B provides that in case shares of members in Association of Persons (AOP) or Body of Individuals (BOI) is unknown or indeterminate, then tax on total income of such AOP or BOI is charged at maximum marginal rate or specified rate whichever is higher. Currently, there are a lot of AOPs or BOIs assesseees where the profits/surplus and/or income is not paid to its members. The same is made in writing through incorporation in bye laws or	<i>It is suggested that in order to reduce avoidable litigation, suitable amendment be made in the section so as to provide clarity that the nil share of members be treated as determinate/ known share and the AOP/BOI concerned be taxed at individual slab rate normally applicable to it.</i>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		governing document of such AOPs/BOIs. It implies that the share of members is nil i.e. determinate or certain/fixed. However, the Department has taken a stand that in such situations; nil share of members will be treated at par with indeterminate/unknown share and hence is taxing them at maximum marginal rate instead of the individual slab rates applicable to them normally. Such assesseees are facing genuine hardships and have to go through the lengthy, time consuming and costly litigation process.	



CHAPTER-XVII

COLLECTION AND RECOVERY OF TAX



PART B-DEDUCTION AT SOURCE

DETAILED SUGGESTIONS

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



Sr. No	Section	Issue/Justification	Suggestion
		Deductee – Mercantile system of accounting There is a provision to take the credit of TDS in the year in which income is assessable to tax. If for any reason, TDS certificate has not been furnished; such certificate can be produced within two years u/s 155 of the Income-tax Act. But issue generally arises when the following situation occurs: In case of a deductee who maintains books of accounts on mercantile basis. The amount due to him in respect of a government contract is accounted for in his books of accounts in a particular year and advance tax/ self assessment tax is paid by him in respect of that income. However, the government which maintains books of account on payment basis pays the amount after two years after deducting tax at source. In such a case, the assessee would neither be entitled to claim credit of TDS in the year of receipt as the income has already been offered to tax in an earlier year nor he would be able to get refund of tax paid by him as the time to file revised return may also have expired. This amounts to payment of tax twice to the government.	
159.	Exemption of TDS on certain payments	There is no specific exemptions from tax deduction at source in case of payments of personal nature, in respect of the cases covered in Section 194A (interest), Sec. 194H (brokerage), and Section 194-I (Rent).	<i>The exemption from tax deduction at source on the payments made for personal purposes may be extended to the payments covered u/s 194A and 194H and 194-I of the Act, in line with the</i>



Sr. No	Section	Issue/Justification	Suggestion
		There does not seem to be any logic to deduct tax at source on payments made on personal account. Merely because an assessee happens to be a proprietor of a concern which is liable for tax audit u/s 44AB of the Act, he should not be made liable for tax deduction on the payments made for personal purposes. He should be treated at par with other individuals.	<i>provisions made in section 194J. Similar amendments may be carried out to provide the aforesaid exemption for TCS provisions as well.</i>
160.	Payment of hire purchase installments under a hire purchase agreement - applicability of tax deduction u/s 194A or 194-I	Under the existing tax deduction provisions, it has not been specifically provided whether payment of hire purchase installments would attract tax deduction. The hire purchase installments comprise of principal & hire finance charge element.	<i>Specific amendment may be made to exclude requirement of deduction of tax on the finance charge u/s 194A or 194-I.</i>
161.	Section 194C - Definition of the term "work"	As per the existing provisions of the Act, the 'work' for the purpose of deduction of tax at source on payment to contractors has been defined to include "manufacturing or supplying a product according to the requirement or specification of customer by using material purchased from such customer". The above provision has resulted in deduction of tax by companies wherein even a small component is supplied on free of cost basis or otherwise to the supplier and supplier in turn supplies the final product along with the component supplied to the customer.	<i>In order to avoid genuine and avoidable hardship to assessee for claiming refund of TDS, it is suggested that the definition of "work" under section 194C in the appropriate clause may be modified as : "manufacturing or supplying a product according to the requirement or specification of a customer by using <u>all/ significant</u> material purchased from that customer"</i>
162.	Section 194C – Coverage of term 'Goods Carriage'	Section 194C(6) provides exemption to small good carriage contractor/transporter (owning not more than 10 goods carriage at any time during the previous year) on	<i>It is suggested to provide a suitable clarification to the issue raised ie whether or not auto rickshaws and/or</i>



Sr. No	Section	Issue/Justification	Suggestion
		furnishing of PAN along with the declaration to that effect to deductor from TDS. The sub-section (6) of section 194C reads as under : - <i>“No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum”.</i> The issue that arises is whether freight paid to auto-rickshaws for transport within city or freight paid to public buses for transport to some other city will be covered in the term “goods carriage” as defined in clause (ii) of the Explanation to Section 194C. Clause (ii) of the Explanation to Section 194C reads as under: - <i>“goods carriage shall have the meaning assigned to it in the Explanation to sub-section (7) of section 44AE”.</i> Explanation to sub-section (7) of section 44AE reads as under: - <i>“the expression “goods carriage” shall have the meaning assigned to it in section 2 of the Motor Vehicles Act, 1988 (59 of 1988)”</i>	buses used for transportation of goods are covered under the definition of goods carriage and hence is not liable to TDS under section 194C(6) upon furnishing PAN along with the declaration of small transport operator to the deductor.



Sr. No	Section	Issue/Justification	Suggestion
		Sub-section (14) of section 2 of the Motor Vehicles Act, 1988 reads as under : - <i>“goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.</i> The above definitions give rise to following views: - a) Auto-rickshaws and buses when used for transporting goods will be covered under the definition of goods carriage and will be liable to provide their permanent account number for non-deduction of tax at source. b) The sub-section (6) was introduced for transporters, and Auto-rickshaw driver and bus driver are not commonly known as transporter.	
163.	Clarification regarding TDS on Commission to a partner under section 194H read with section 40(b)	In case of partnership firms, Section 40(b)(i) provides that “remuneration” shall mean any payment of salary, bonus, commission or remuneration by whatever name called. Considering a partner and partnership firm as one entity, the provisions of tax deduction at source under section 192 have not been made applicable on payment of such remuneration, as the same is not taxable under the head “Salaries”. Also, the provisions of TDS under section 194A are not applicable to interest (other than interest on securities) credited or paid by a firm to a partner of the firm.	<i>On the lines of the provision of section 194A, section 194H be amended to provide that Commission paid by the Partnership firm to its partners would not be liable to Tax deducted at source under section 194H.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>



Sr. No	Section	Issue/Justification	Suggestion
		Section 194H provides for tax deduction at source in respect of commission or brokerage. On the lines of section 192 and 194A, there is a need to clarify that Commission paid by the Partnership firm to its partners would not be liable to Tax deduction at source under section 194H.	
164.	Section 194-I - TDS on rental income	As per the provisions of section 194-I, the tax is to be deducted at source @10% in respect of income by the way of rent for any use of land or building or furniture or fixture etc. The proviso to section 194-I further provides that no tax be deducted in case the total rent paid in a financial year does not exceed Rs.1,80,000/-. Considering the general basic exemption limit of Rs.2,50,000/- for the Assessment year 2017-18 and for Senior Citizens of Rs.3,00,000/- the present limit of Rs.1,80,000/- seems to be too low, especially for those Senior Citizens whose source of income is only rent. Hence, the limit of Rs. 1,80,000/- under section 194-I may be increased appropriately.	<i>Considering the increase in the basic exemption limit for general assesseees and senior citizens, it is suggested that the exemption limit of Rs. 1,80,000 in respect of TDS on rent under section 194-I be enhanced appropriately.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
165.	Section 194-IB – Requirement of tax deduction at source by individuals/HUFs paying monthly rent exceeding Rs.50,000 - Enabling measures to facilitate ease of	The Finance Act, 2017 inserted new section 194-IB to provide that an Individual or a HUF (other than those covered under clause (a) & (b) of section 44AB of the Act), responsible for paying to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of month during the previous year, shall deduct an amount equal to five per cent. of	<i>It is suggested that a suitable clarification be issued clarifying the amount on which tax needs to be deducted under section 194-IB in case the monthly rent has been increased during the year and the amount of rent per month before such</i>



Sr. No	Section	Issue/Justification	Suggestion
	compliance to be introduced & issue of clarification regarding the amount on which tax has to be deducted at source in a situation where monthly rent is increased during the previous year and the increased monthly rent exceeds Rs.50,000	such income as income-tax thereon. It is further provided that tax shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. Issues: (1) The amount on which tax needs to be deducted in the last month of the previous year would generally be the total rent paid during the previous year. However, in a case when the monthly rent currently does not exceed Rs.50,000 but the same is increased, say, in the month of February and the increased rent amount exceeds Rs.50,000 per month, then it is not clear on what amount the tax needs to be deducted. Whether the tax needs to be deducted on the rent paid during that previous year although the rent per month for some of the months is less than Rs.50,000 p.m or the rent needs to be deducted on the aggregate amount of rent for the months where rent has exceeded Rs.50,000 pm. (2) Since it is also provided that the deductor shall be liable to deduct tax only once in a previous year, requisite measures for one time remittance of tax by such deductor	increment was less than Rs 50,000.



Sr. No	Section	Issue/Justification	Suggestion
		may be implemented to facilitate easy compliance.	
166.	Section 194J- Fees for professional or technical services	The amendment to section 194J by the Finance Act, 2012 requires deduction of tax at source @ 10% on any remuneration or fees or commission, by whatever name called, to a director of a company, other than those on which tax is deductible under section 192. However, the independent limit of Rs.30,000 each provided for under section 194J in respect of other payments covered therein, namely, royalty, fee for technical services, fee for professional services and non-compete fees, as a threshold, beyond which TDS @ 10% would be attracted, is not being provided in respect of director's remuneration. This unintended inequity may be removed.	<i>It is suggested that section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
167.	Section 194LC- Income by way of interest from Indian Company	a) Income by way of interest from Indian Company The Finance Act, 2012 inserted section 194LC to provide that the interest income paid by specified company or business trust to a non-resident shall be subjected to tax deduction at source at the rate of 5%. Section 115A was also amended to provide that such income will be taxed at the rate of 5%. Section 194LC(2)(ii) provides that for the purpose of deduction of tax at source at the rate of 5%, the interest payable by the specified company or business trust to a non-resident, not being a company or a	<i>a) In order to bring out the real intent of the law, it is suggested that the section 194LC(2)(ii) may be reworded to provide that the interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company or business trust "IF such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to</i>



Sr. No	Section	Issue/Justification	Suggestion
		foreign company, shall be the income payable by the specified company TO THE EXTENT TO WHICH SUCH INTEREST DOES NOT EXCEED the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment. It is imperative to note that usage of the term "To the extent to which such interest does not exceed" may be interpreted to mean that in case the borrowings are made at a rate higher than the rate approved by the Central Government, the interest income on the difference will be chargeable to tax at the rate of 20%. As per the explanatory memorandum, this amendment was made in order to augment long-term low cost funds from abroad. It is felt that this is an inadvertent mistake and thus needs to be reworded.	<i>the terms of the loan or the bond and its repayment"</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>
		b) Expansion of scope and extension of time limit The Finance Act, 2012 had introduced Section 194LC in the Act to provide for lower deduction of tax @ 5 per cent on interest payments by Indian companies on borrowings made in foreign currency (under a loan agreement or by way of issue of long term infrastructure bonds) before 31 July 2017. The Finance (No 2) Act, 2014, amended Section 194LC of the Act to include all long term bonds (including infrastructure bonds). Apart from loans and bonds, debentures are also widely used for	b) The concessional tax rate of 5 per cent on interest should be made applicable on other debt securities including debentures, trade credit issued/ availed by any Indian company.



Sr. No	Section	Issue/Justification	Suggestion
		raising funds by the Indian companies. Currently, there is no clarity whether interest payment on such debentures would be eligible for reduced tax deduction rate under Section 194LC of the Act. Also, the cut-off date as provided in the section (31st July 2017) is impendent. In line with the objective of the government to attract foreign investments and a higher growth rate, the current time lines may be extended.	
168.	Section 194LC and Section 206AA - Scope of concessional rate of tax on overseas borrowings	Currently as per the provisions of section 194LC of the Act, interest paid by an Indian company to a non-resident, in respect of approved borrowings made (during the period 1 July 2012 to 30 June 2015) in foreign currency from sources outside India (under a loan agreement or on issue of long-term infrastructure bonds) is taxable at a concessional rate of 5% (plus applicable surcharge and education cess). Further, as per section 206AA(7) of the Act, interest paid on the long-term infrastructure bonds would be subject to a concessional rate of tax irrespective of whether the lender has a Permanent Account Number (PAN) in India or not. In order to further augment low cost long-term overseas borrowings, the amendments to section 194LC and section 206AA of the Act respectively are made effective from 1 October 2014. Under the aforesaid proposed amendment, the benefit of lower withholding tax	<i>It is, therefore, suggested to make the aforesaid amendments to the Act effective from 1 April 2014 to enable corporates to use this rare window of opportunity to raise long term capital at competitive price, for their capital expenditure. There are quite a few proposals in the pipeline for raising long term capital from the international debt markets which could get adversely impacted if this amendment is implemented as per the currently enacted timeline of 1st October 2014. Therefore, there is an urgent need to make the amendment effective as suggested.</i>



Sr. No	Section	Issue/Justification	Suggestion
		@5% for overseas borrowing is extended up to 1 July 2017 and it shall apply to all long term bonds and not merely restricted to infrastructure bonds as is the case under the relevant provisions of the existing Income tax Act. Further, the benefit of section 206AA(7) of the Act, shall be extended to all types of long term bonds including infrastructure bonds, which means PAN of beneficial holders of bonds shall not be mandatory for all types of long term bond issues in the international market. Hardships While the fiscal measure taken by the Government to encourage the corporates to raise long term capital at competitive price for their capital expenditure are appreciated, there is an urgent need for making the proposed amendments effective from 1 April 2014 so that companies can take advantage of the prevailing opportune market conditions. In this connection, the global market conditions have been summarized below: ➤ The international debt markets are very strong and buoyant, with the Asia ex Japan G3 market seeing over US\$116bn in 2014 till date in issuance volumes, nearly 83% of total issuance in 2013. ➤ Investor liquidity remains very strong, and there are consistent fund flows back into emerging market and Asian bonds for the past 14 consecutive weeks.	



Sr. No	Section	Issue/Justification	Suggestion
		➤ US treasury yields remain significantly lower than at the start of the year, as the markets gauge the outlook for the global economy, geopolitical risks and the expected actions of the Central Banks. 2.55% / 3.37%. ➤ US rates at 2.55% for 10 years and 3.37% for 30 years remain conducive for issuers looking to extend duration, with the 30-year US Treasury currently close to a 9 month low. ➤ Global credit market conditions remain very strong with credit spreads having tightened sharply over the past year. ➤ The demand for Indian credits has been extremely strong, with Indian credit spreads having tightened by 30-40 bps since 1 April and 80-100 bps since 1 February 2014. This has been driven by supportive technicals, relative lack of supply and improved macro indicators. These favourable financial market conditions could get impacted in the short term by changes in the economic data emanating from the major economies as well as due to geopolitical factors such as the continued unrest in the Middle East.	
169.	Enhancement of Limits for TDS on professionals – Section 194J	TDS threshold limits u/s 194J were last revised in 2010. The deduction of tax at source on such small amounts involves deployment of relatively large amount of resources in terms of manpower, systems and	<i>It is suggested that the TDS limit for payment of professional or technical fees under section 194J may be</i>



Sr. No	Section	Issue/Justification	Suggestion
		other costs at the assessee's end without any significant benefits to the revenue.	increased from Rs. 30000 to Rs. 100000.
170.	Section 195 – a) Scope and applicability	Finance Act, 2012 extended the obligation to withhold taxes to non-residents irrespective of whether the non-resident has - (i) a residence or place of business or business connection in India; or (ii) any other presence in any manner whatsoever in India. The aforesaid amendment was introduced with retrospective effect from 1 April 1962. The amendment results in a significant expansion in the scope of withholding provisions under the Act and will cover all non-residents, regardless of their presence/connection in India. The Supreme Court in the case of Vodafone International Holdings B.V. had observed that the provisions of Section 195 of the Act would not apply to payments between two non-residents situated outside India. The Supreme Court also referred to tax presence as being a relevant factor in order to determine whether a non-resident has a withholding obligation in India under Section 195 of the Act.	Keeping in view the observations of the Supreme Court, it is suggested that the amendment should be modified to restrict the applicability of withholding tax provisions to residents and non-residents having a tax presence in India. At least, it should be clarified that the amendment will not have retrospective application.
	b) Time limit for issuance of “general or special order”	Section 195(2) provides where a payer considers that whole of the sum being paid to a non-resident is not chargeable to tax, he may make an application to the Assessing Officer to determine by general or special order, the appropriate portion of the sum so chargeable. It may be noted that no time limit of	It is suggested that an appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer. Further, where an application is rejected,



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



Sr. No	Section	Issue/Justification	Suggestion
		section 204(iii), defining “person responsible for paying” in case of credit, or, as the case may be, payment of any other sum chargeable under the provisions of this Act, to mean the payer himself, or, if the payer is a company, the company itself including the principal officer thereof. The above definition of “person responsible for paying” given in section 204(iii) is in relation to credit or payment of any sum chargeable under the provisions of this Act, and is hence, relevant in the context of section 195(1). However, the said definition has to be amended to make the same relevant in the context of section 195(6) also. Further, in section 204, the “person responsible for paying” has been defined for the purposes of the foregoing provisions of Chapter XVII and section 285. Since section 285 is in respect of submission of statement by a non-resident having liaison office, the definition of “person responsible for paying” given in section 204 is not relevant in the context of section 285. Consequently, taking into consideration the above issues, section 204 needs to be appropriately amended. A penalty of Rs. 1 lakh is leviable under section 271-I for failure to furnish information or for furnishing inaccurate information under section 195. The penalty is quite high, considering that the reporting requirement may be relating to a transaction which is not be	<i>case may be, payment of any other sum chargeable under the provisions of this Act, or in the case of furnishing of information relating to payment of any sum to a non-resident (not being a company), or to a foreign company, whether or not such sum is chargeable under the provisions of the Act, the payer himself or if the payer is a company, the company itself including the principal officer thereof.’</i> <i>(ii) The penalty may be reduced, in case non-furnishing of information relates to a transaction not chargeable to tax.</i> <i>(iii) The meaning of “person responsible for collecting” may be incorporated in the Act.</i>



Sr. No	Section	Issue/Justification	Suggestion
		chargeable to tax. Also, while the meaning of “person responsible for paying” has been defined under the Act, “person responsible for collecting” has not been defined anywhere in the Act. The meaning of “person responsible for collecting” may be incorporated in the Act for clarity.	
	e) Section 195-Clarification required	In section 195, Clarification on TDS from payments to non-residents having no Indian branch/ fixed place/ Permanent Establishment in India should be inserted. In various cases, Income-tax department attracts the provision of section 195 and ask the assessee to deduct TDS. For example, when expenses such as commission payment is done by the Indian Residents to Foreign Residents having no branch/fixed place or Permanent Establishment in India and who work outside India and they help in promoting and sales of Indian Goods then the Income-tax department attracts the provision of section 195 and ask the assessee to deduct TDS. Hitherto, the export commissions paid to foreign agents were never in question of taxation in India. This was fortified by CircularNo.23 dated 23 July 1969 which stated that where a foreign agent of India exporters operates in his own country and his commission is usually remitted directly to him and is, therefore, not received by him or	<i>In order to avoid litigation it is suggested that a suitable amendment in form of Explanation should be inserted in section 195 of the Income-tax Act or alternatively an appropriate clarification by way of circular may be given</i>



Sr. No	Section	Issue/Justification	Suggestion
		his behalf in India, such an agent is not liable to income tax in India on the commission. Later Circular No. 786 dated 7 February 2000 emphasized the clarification in the above circular and laid down the law that where non-resident agent operates outside the country, no part of his income arises in India and since the payment is usually remitted directly abroad, it cannot be held to have been received by or on behalf of agent in India. Such payment were therefore, held to be not taxable in India. In 2009, vide circular No 7, both the above circulars namely Circular No. 23 dated 23-07-1969 & Circular No. 786 dated 07-02-2000 were withdrawn, reasoning that interpretation of the Circular by some of the taxpayers to claim relief is not in accordance with the provisions of section 9 of the Income-tax Act, 1961 or the intention behind the issuance of the Circular. With the withdrawal of the circulars, it was left to the courts to decide the issue afresh.	
	f) Applicability of Rule 37BB read with Section 195 for making remittances outside India	Remittance under Liberalised Remittances Scheme of RBI Amended Rule 37BB(3)(i) of the Rules exempts remittances as per the provisions of Section 5 of the FEMA read with Schedule-III i.e. only current account transactions.	Capital account transactions should be specifically included in the exclusion list of Rule 37BB(3)(i) of the Rules read with Section 195(6) of the Act.



Sr. No	Section	Issue/Justification	Suggestion
		As per Section 5 of the FEMA, any person may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a current account transaction provided that the Central Government may, in public interest and in consultation with the Reserve Bank of India, impose such reasonable restrictions for current account transactions as may be prescribed. The Master Direction No. 7/2015-16 dealing with the Liberalised Remittance Scheme (LRS) is a liberalisation measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both. The press release issued by the CBDT on 17 December 2015 states that Form 15CA and 15CB will not be required to be furnished by an individual for remittances which do not require RBI approval under the LRS. However, it may be noted that LRS does not find any specific mention in the amended Rules. LRS is a wider term as it includes within its scope both permissible capital and current account transactions. The amended Rules is silent with respect to the capital account transactions under LRS.	
	g) Penalty for failure to furnish information or furnishing	The Finance Act, 2015 has introduced penalty (Section 271-I of the Act) in case of failure to furnish information or furnishing of inaccurate information as required	<i>It is not clear whether the penalty is qua the payment made or qua the transaction or qua the contractual</i>



Sr. No	Section	Issue/Justification	Suggestion
	inaccurate information under Section 195	to be furnished under Section 195(6) of the Act, to the extent of INR one lakh.	obligations for a specific financial year. Therefore, the same should be clarified in a suitable manner.
171.	Consequences of failure of deduct or pay withholding tax Section 201) – Extension of benefit in respect of payments made to non-residents	Where in case any person fails to deduct or pay the whole or any part of the tax on the sum paid or on the sum credited to the account of a person, he shall be deemed to be an assessee in default in respect of such tax. However proviso to S. 201 states that a person shall not be considered to be an assessee in default in respect of such taxes, if the resident has furnished his return of income under Section 139, has taken into account such sum for computing income in the return of income, has paid the tax due on such income in the return of income and the person has obtained a certificate from an accountant in the prescribed form.	The benefit of the first proviso has only been provided to a person in respect of payments made to resident and the conditions mentioned in the first proviso have been fulfilled. With a view bring more relief to assessee, the benefit of the said proviso shall also be extended in respect of payments made by persons to non-residents
172.	a) Section 206AA - Exemption from requirement of furnishing PAN under section 206AA to certain non-residents – Request to treat the amendment as clarificatory	The Hon'ble Finance Minister has, in para 176 of his Budget Speech [Union Budget 2016-17] stated that non-residents without PAN are currently subjected to a higher rate of TDS. Hence, the Finance Act, 2016 amended the relevant provision to provide that on furnishing of alternative documents, the higher rate will not apply. The said beneficial provision appears to be clarificatory in nature and hence, may be given effect to since the inception of section 206AA.	It is suggested that this amendment be treated as clarificatory.



Sr. No	Section	Issue/Justification	Suggestion
	b) Relieve return filing obligation if royalty/ FTS/ capital gains has suffered TDS and also clarify that s.206AA(7)(ii) read with Rule 37BC has retrospective effect	Pursuant to recommendations in the first report of the Income Tax Simplification Committee, Finance Act 2016 has liberalized the provisions of s.206AA by inserting s.206AA(7)(ii) which provides that s.206AA shall not apply to payments to non-residents subject to conditions as may be prescribed. Recently, CBDT has notified Rule 37BC which provides that if the non-resident payee furnishes certain information and documents like TRC or Unique Identification number in his home country, s.206AA shall not apply to specified payments viz. interest, royalty, FTS and capital gains. This is a welcome relief to the taxpayers and considerably improves ease of doing business with non-residents by obviating the need to obtain PAN for non-residents. However, the requirement of filing returns by such non-residents still continues (except for interest payments covered by s.115A(1)(a)) and without PAN, it is also possible to file return. Thus the position which presently exists is that while PAN is not necessary at withholding stage, it is still necessary for filing return. Non-filing of return attracts penalty u/s.	<i>In limine with recent exemption provided to non-residents from obtaining PAN for avoiding higher TDS u/s. 206AA if they furnish TRC, they should also be relieved from return filing obligation where payer has already withheld taxes and reported in Form 15CA/CB.</i> <i>Additionally the non-residents shall also be relieved from filing Form 3CEB and maintaining transfer pricing document in case of transactions with associated enterprises on which appropriate TDS has been deducted.</i>



Sr. No	Section	Issue/Justification	Suggestion
		271F as also risk of prosecution u/s. 276CC The TDS rates applicable for non-residents is generally the final tax payable by such non-residents. The information of payments to non-residents gets transmitted to Tax Department on real time basis through compliance u/s. 195(6) read with Rule 37BB (Form 15CA/B) and quarterly withholding tax returns. Hence, requirement of filing return has no real benefit to the Tax Department. On the contrary, it increases compliance burden for the non-residents and makes them liable for penalty or prosecution.	
	c) PAN for foreign parties i.e. non-residents	India has entered into number of DTAA under the Vienna Convention and the domestic law under section 206AA should not override such agreements with other countries. Therefore, it should be provided that wherever the rate of tax under the DTAA is lower than 20% under section 206AA, same should be applicable irrespective of the non resident having PAN in India.	<i>It is suggested that section 206AA should not override the DTAA entered in to by India.</i>



PART C-ADVANCE PAYMENT OF TAX

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
173.	Section 208 - Revision of Limit of advance tax	The Finance Act (No. 2), 2009 raised the limit to pay advance tax under section 208 to Rs. 10,000. Considering the inflationary conditions prevailing in the country, it is felt that the said limit needs to be revised upwards so that the amount payable in one instalment of the advance tax exceeds at least Rs. 5,000. The present amount of Rs. 2,500 is too low. Infact, any assessee whose advance tax payable does not exceed Rs. 30,000 should be allowed to pay full amount in the last instalment. It is appreciable that the Finance Act, 2016 has provided for an exception to an eligible assessee in respect of an eligible business referred to in section 44AD to pay the whole of the advance tax in one go by 15 th March of the financial year itself.	<i>The limit to pay advance tax under section 208 be raised appropriately. Infact, any assessee whose advance tax payable does not exceed Rs. 30,000 maybe allowed to pay full amount in the last instalment.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
174.	Draft notification for introduction of proposed Rule 39A dealing with the reporting of estimated income and	With a view to create a mechanism for self-reporting of estimates of current income, tax payments and advance tax liability by companies and persons to whom tax audit is applicable, on voluntary compliance basis, the government has proposed to introduce new Rule 39A and Form No.28AA in the Income-tax Rules, 1962 (the Rules). The draft notification states that the taxpayer being a company and person to whom tax audit is applicable	<i>In view of aforesaid, it is suggested that the draft notification which the government proposes to introduce should be done away with as this would only lead to additional burden of compliance on the taxpayers.</i>



	advance tax liability	shall furnish an intimation of estimated income and payment of taxes as on 30 September of the previous year, on or before 15 November of the previous year. If the income estimated as on 30 September of the previous year is less than the income of the corresponding period of the immediately preceding previous year by an amount of INR5 Lakh or 10 per cent, whichever is higher, then the taxpayer shall be required to furnish an intimation of estimated income and payment of taxes as on 31 December of the previous year, on or before 31 January of the previous year. The erstwhile regime The erstwhile provisions under the Income-tax Act, 1961 (the Act) (viz. Section 215), required the taxpayer to pay advance tax on the basis of his own estimate (including revised estimate). Up to Assessment Year (AY) 1988-89, there was a similar requirement of furnishing an estimate of advance tax in Forms 28A and 29. These requirements gave the assessing authorities discretionary powers to charge interest and also to levy penalties for the same default, which has also been mentioned in the Circular No. 549 . This led to a lot of litigation and consequent delay in the realisation of the dues. With a view to fulfil the rationale to simplify the aforesaid provisions and also to remove the discretion of the assessing authorities, which had led to litigation and consequent delay in realisation of dues, the Direct Tax	



	Laws (Amendment) Act, 1987, substituted the above provisions by a simple scheme of payment of mandatory interest for defaults mentioned therein. The provisions of Section 234B of the Act have replaced the erstwhile provisions of Section 215 and Section 217 of the Act, applicable from the AY 1989-90 to levy interest for failure to deposit advance tax upto 90 per cent of the tax liability on assessed income before the end of the previous year. The provisions relating the charge of mandatory interest are contained in the new sections 234A, 234B and 234C of the Act. Under the erstwhile provisions of Section 215/217 of the Act, the rate prescribed was 15 per cent per annum. The Direct Tax Laws (Amendment) Act, 1987, has increased this rate to 24 per cent under Section 234B of the Act. Similarly, the rate of 15 per cent under the erstwhile Section 216 of the Act was increased to 18 per cent under Section 234C of the Act. A co-joint reading of the above-referred rationale along with the introduction of Section 234B/234C of the Act seems to suggest that on one hand the taxpayers' compliance rigors have been reduced by way of introduction of the new set of provisions and on the other hand, to compensate the same, the interest rates have been increased. Under the Act, the taxpayer has been	



		paying advance tax on his own accord in accordance with the estimated income of a particular year without being required to disclose the method of computation. On the other hand, the tax officer also has the power under Section 210 to require the taxpayer to pay a particular sum of advance tax based of his own calculation. Additional compliance burden on the taxpayer as well as the tax department Companies listed on the recognized stock exchange are required to submit the quarterly and year-to-date standalone financial results to the stock exchange along with limited review report or audit report as applicable. There is already a compliance procedure which needs to be adhered to in case of listed companies. Further, in today's times where business acquisitions and mergers are the norm of the day, the business models and resultant profitability may change post such divestment/acquisition during the year which may render the mid-year reporting redundant. This additional reporting under the Rules will further increase the compliance burden on the listed companies which are already reeling under the pressure of newly introduced legislations like Ind-AS, Goods and Services Tax (GST), Income Computation Disclosure Standards (ICDS), etc.	



	This additional compliance in the form of furnishing intimations will increase the compliance cost of the taxpayer. Further, the taxpayers may have to spend more time and resources to report such estimation of present year as well as comparable earlier years. This will also involve increase in the additional work for the tax department in the process of gathering information and processing the same through data mining techniques which has been submitted on a mere estimate basis. ‘Ease of doing business’ in India The government has introduced several measures in the recent years to ensure that India’s rankings get a boost in the overall ‘Ease of doing business’ index as released by World Bank and other similar organizations’. The proposed rule could act as an impediment in the process of paving the way for a conducive environment of ‘Ease of doing business’ in India and may impact India’s rankings on the “Doing business’ index. Even in the largest economy like USA, the taxpayer has the freedom of computing advance tax on own accord based on estimated income without disclosing to the tax authorities. Rationale for providing this	



	additional information The draft notification states that it is proposed to create a mechanism for self-reporting of estimates of current income, tax payments and advance tax liability by certain taxpayers. The notification does not provide an appropriate rationale/reasoning apart from stating that the objective is to create a mechanism for self-reporting. Further, though it appears from the draft notification that the requirements are part of voluntary compliance it seems that the requirements are mandatory in nature for the specified taxpayers. It is important to note that the mechanism requires the taxpayer to provide details of estimated income, tax liability for the previous year as well as for the year immediately preceding the previous year. The taxpayer is also required to provide details of turnover, profit etc. for the same period as well as for the year immediately preceding the PY and for the PY ending 31 March (estimated) and for the year immediately preceding the corresponding PY. The type of information asked for is quite cumbersome and there does not seem to be an appropriate rationale for asking the taxpayer to provide such information. More likely than not, there is a possibility that the tax officers may use this scheme causing inconvenience to the taxpayers and may lead to the taxpayer community ending up providing repetitive information. Further, this may lead to	



		unwarranted litigation. Managing the information in a secure manner The information provided by the taxpayers need to be maintained in a secure manner. This kind of information could also create volatility in the stock price in case of the listed companies if sensitive information is not managed securely. Further, the tax officers may assume additional powers which could then be used for verification and the assessment process will indirectly start before furnishing the return of income.	



PART F-INTEREST CHARGEABLE IN CERTAIN CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
175.	Section 220(2A), 273A, 273AA – Time limit for disposing waiver applications provided - Consequence of not passing the order within the time limit to be spelt out	Provision incorporated in sections 220, 273A and 273AA requiring disposal of waiver applications within twelve months of receipt of application. However, there is no specific provision to address the consequences, if authority does not pass waiver order within stipulated period.	<i>The time limit may be redundant unless there is a specific provision for consequences in case of failure to pass the waiver order within prescribed time limit. Hence, it may be provided that, if the Principal Commissioner/ Commissioner fails to pass the order within the time limit, interest, penalty etc. may be deemed to be waived.</i>



PART G-LEVY OF FEE IN CERTAIN CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
176.	Waiver of fees in case of delay in filing quarterly TDS returns Section 234E	Section 234E provides for levy of fees of Rs 200 per day where there is delay in filing of quarterly TDS returns. This penalty is being levied in all the cases on a causal manner without going into the facts of the case and verifying the reasons for delay in filing of TDS return. This creates lot of difficulties for the tax payers, as even on account of genuine delay, there is a penalty. Section 119 empowers CBDT to forego the levy of penalty under Section 234E if it feels necessary to do.	<i>It is recommended that Section 234E be appropriately amended so that no penalty is levied on a casual basis and atleast notice initiating the proceedings is first issued before the levy of penalty</i>
177.	Fees under section 234E	a) The levy of fees under section 234E has been a matter of great concern. It is highly appreciable that the Government has taken an open mind while considering the problems of e-filing of statement of TDS /TCS and has extended the time only for Government deductors earlier. In fact, considering the difficulties being faced by the government deductors, the circular No. 7/2014 dated 4.3.14 was a step in the right	<i>It is highly appreciable that the Government has taken an open mind while considering the problems of e-filing of statement of TDS /TCS and has extended the time only for Government deductors earlier. In fact, considering the difficulties being faced by the government deductors, the said circular (No. 7/2014 dated 4.3.14) was a step in the right direction. Since the above difficulty equally applies for other deductors also, one time amnesty is sought for all deductors with regard to all TDS statements pertaining to FY 2012-13 and FY 2013-14 to be submitted on or before a cutoff date to be decided appropriately.</i>



Sr. No	Section	Issue/Justification	Suggestion								
		direction. Since the above difficulty equally applies for other deductors also, one time amnesty is sought for all deductors with regard to all TDS statements pertaining to FY 2012-13 and FY 2013-14 to be submitted on or before a cutoff date to be decided appropriately.									
		b) According to the provisions of section 234E, where a person fails to deliver or cause to be delivered a statement within the time prescribed then he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues. But the amount of fee shall not exceed the amount of tax deductible or collectible, as the case may be. Considering the hardships being faced by the taxpayers due to various reasons, penal fees for late filing of TDS returns need to be changed to period wise/ slab of days instead of current system.	<i>It is suggested to follow day wise slab system & it may be taken as:</i> <table><tr><th><i>Period of Default</i></th><th><i>Max. Fees u/s 234E</i></th></tr><tr><td><i>Upto 15 Days</i></td><td><i>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i></td></tr><tr><td><i>From 15 Days to 1 Month</i></td><td><i>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i></td></tr><tr><td><i>From 1 Month Onwards</i></td><td><i>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.</i></td></tr></table>	<i>Period of Default</i>	<i>Max. Fees u/s 234E</i>	<i>Upto 15 Days</i>	<i>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i>	<i>From 15 Days to 1 Month</i>	<i>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i>	<i>From 1 Month Onwards</i>	<i>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.</i>
<i>Period of Default</i>	<i>Max. Fees u/s 234E</i>										
<i>Upto 15 Days</i>	<i>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i>										
<i>From 15 Days to 1 Month</i>	<i>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</i>										
<i>From 1 Month Onwards</i>	<i>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.</i>										



Sr. No	Section	Issue/Justification	Suggestion
178.	Section 234F – Fee for delayed filing of return – Removal of provision levying fees to prevent undue hardship for the genuine assessee	The Finance Act, 2017 vide section 234F levied fees of Rs.5,000 in case where return is furnished after the due date but on or before 31st December of the relevant assessment year and Rs.10,000, in other cases. However, it is also provided to restrict the fees to Rs.1,000, where the total income does not exceed five lakh rupees. Erstwhile provisions provide for penalty of Rs.5,000 under section 271F in case where return is furnished after end of relevant assessment year provided there is no reasonable cause for such delay. The provision is made with a view to ensure that returns are filed within the due dates specified in section 139(1). However, fees levied under section 234F will be leviable on all assesseees who have furnished return beyond the due date specified under section 139(1) irrespective of the reason for such delay and whether all the taxes have been paid through TDS or Advance Tax. Also, the assessee cannot justify his cause for delay under any appeal against the same as there is no provision to consider the	<i>It is suggested that fees levied under section 234F for delayed filing of return may be withdrawn and necessary amendments be made in section 271F.</i>



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		reasonable cause for delay on the part of assessee. Further, fee is generally levied in respect of services rendered. Whereas collection of tax by the Government is a sovereign function, as such, there is no rendering of services. Delay in filing of return is in contravention of law for which penalty should be attracted. The same can be waived if reasonable cause is proved.	



CHAPTER XIX-A

SETTLEMENT OF CASES



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
179.	Restoration of the provisions of erstwhile Section 245E	Section 245E of the Act was inserted in year 1975, amended in 1984, 1987 and the provisions were made inapplicable for applications filed on or after 01-06-2007. The erstwhile provisions of section 245E reads as under: <i>"If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also.</i> <i>Provided that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds nine years.</i> <i>Provided further that no proceeding shall be reopened by the Settlement Commission under</i>	<i>It is suggested that the provisions of erstwhile section 245E be restored in 'Chapter XIX-A Settlement of Cases' for proper and justified disposal of cases of applicants.</i>



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



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<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		on the same issue or same modus operandi.	



CHAPTER XX

APPEALS & REVISION



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
180.	Delay by Assessing Officer in issuing Order giving effect to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order	It has been experienced that when any order of higher appellate authorities is received, and moreover when the order is in favour of the assessee, the Assessing officer delays in issuing the Order giving effect to such appellate orders. Due to this delay, the refund arising from such appellate orders also gets delayed. Secondly, it is also observed that in most of the cases, the issuing of Refund Cheques/ Warrants are purposefully delayed and the interest on such refunds, as per the provisions of the Income-tax Act, 1961 is calculated only up to the date of issue of Assessment order / Order Giving effects to appellate orders. This results in, assessee being deprived of interest on the delayed refunds and also assessee does not earn any interest on the Interest on Refunds for the period of such delay of issuing of refund warrants by the Assessing officers.	<i>It is suggested that time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act. If the order provides for fresh modification of the assessment, the same should be given effect to within 12 months from the end of the month in which it is received by the Commissioner.</i> <i>Also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act)</i> (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
181.	Explanation 2 to section 263 – Circumstances when an order passed by the Assessing Officer is erroneous in	Section 263(1) provides that if the Principal Commissioner or Commissioner considers that any order passed 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	<i>It is suggested that appropriate clarification may be issued by way of a circular or otherwise to ensure clarity on the aforesaid issues and reduce the discretionary exercise of revisionary powers by the Commissioner/Principal</i>



	so far as it is prejudicial to the interest of revenue – Need for clarification	and after making an enquiry pass an order modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment. Explanation 2 is being inserted in section 263(1) w.e.f. 01.06.2015 to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,— (a) the order is passed without making inquiries or verification which, should have been made; (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. Probable hardship The language of the Explanation gives scope for multiple interpretations and hence, can be the subject matter of	Commissioner. <i>Further, clause (a) of Explanation 2 to section 263(1) providing that an order would be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if it is passed without making inquiries or verification which should have been made, may be removed, since the condition is very subjective.</i>



		litigation. It is possible that there may be cases where the Assessing Officer makes inquiries to his satisfaction, but it may be inadequate in the opinion of the Commissioner. Also, it is not clear as to the point of time when it must be seen whether the order has been passed by the Assessing Officer in accordance with any direction or instruction of the CBDT under section 119 or in accordance with any decision rendered by the jurisdictional High Court or Supreme Court – whether at the time of passing of the order by the Assessing Officer or at the time when the Commissioner invokes his jurisdiction under section 263. It may be possible that the order passed by the Assessing Officer is not in accordance with the decision of the Supreme Court or jurisdictional High Court pronounced after passing of such order. Further, since the amendment has already been made applicable from 1st June 2015, it needs clarification whether the same would be applicable only in cases where the order of the Assessing Officer is passed on or after that date; or whether the amended provisions would get attracted even if the order is passed before that date but the revisionary proceedings are pending before the Commissioner/Principal Commissioner on that date.	



CHAPTER XX-B

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



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
182.	Section 269SS and 269T – Mode of taking or accepting and repayment of certain loans and deposits through banking channels	Section 269SS of the Income-tax Act, 1961 requires that acceptance of any loan or deposit or any specified sum exceeding Rupees twenty thousand may be made only by an account payee cheque or an account payee bank draft or use of electronic clearing system. Further, Section 269T of the Income-tax Act, 1961 requires that the repayment of any loan or deposit or any specified advance exceeding Rupees twenty thousand may be made only by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. The Finance Act (No. 2), 2014 provided to allow the other valid modes like “use of electronic clearing system through a bank account” w.e.f 01.04.2015. Extending the scope w.e.f Assessment year 2015-16 limits the purpose of the amendment. Several litigations are pending since transactions made through RTGS, NEFT, ECS and EFT was not covered within the scope of section 269SS and 269T.	<i>In order to clarify the intent of the law, it is therefore suggested that the beneficial amendment as made by Finance (No. 2) Act, 2014 extending the scope of payment modes by including electronic fund transfer should be effective for all pending cases instead of AY 2015-16, by inserting an explanation in both section 269SS and section 269T.</i>
183.	Section 269ST - Restriction on cash transactions – Certain concerns to be addressed	In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, the Finance Act 2017 inserted section 269ST in the Act to provide that no person shall receive an amount of two lakh rupees or more,— (a) in aggregate from a person in a day; or (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic	



	clearing system through a bank account. Further, vide notification no 28/2017, dated 5.4.2017, it has been provided that such restriction on cash receipt shall not apply to receipt of cash by any person from a bank, co-operative bank or a post office savings bank. Thus, cash withdrawals from a bank, co-operative bank or a post office savings bank would not be hit by the provisions of section 269ST. Subsequently, vide Circular No 22/2017, dated 3.7.2017, it has been clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST. Issues (i) The phrase "transactions relating to one event or occasion" is very subjective and prone to multiple interpretations and may result in avoidable litigation. Receipts exceeding Rs. 2 lakhs in respect of transactions relating to one "event or occasion" from a person is prohibited. Say for example, if salary/ wages is paid in cash to supervisor/ consultant every month such that yearly aggregate exceeds threshold limit of Rs. 3 lakhs, tax authorities may argue that such receipt is covered by section 269ST since payment of salary constitutes one event or occasion even though payments might have been disbursed monthly and raise a demand notice. Hence, it may be suggested that third limb of "event or occasion" should be explicitly kept out of the scope to avoid any litigation and protect honest taxpayers. Similar controversy may also arise in case of second limb which covers receipt in respect of a "single transaction".	<i>It is suggested that suitable clarificatory guidelines may be issued to illustrate the intent of the phrase "transactions relating to one event or occasion from a person". In the alternative, clause (c) may be removed</i>



	(ii)	Some exceptions on the lines of Rule 6DD need to be provided. Payment of fund amongst relatives, say for household expenses or medical emergencies, is not exempted; settlement of debt by book entry or conversion of loan into equity may also stand covered since it does not strictly fall within the specified modes mentioned above. It is appreciable that certain exceptions were provided vide Notification No 57/2017 dated 3.7.17. However, there is a still a scope of further additions to such exceptions.	<i>Exceptions on the lines of Rule 6DD may be provided.</i>
	(iii)	The Finance Minister, in his budget speech on 1.2.17 has mentioned that promotion of a digital economy is an integral part of Government's strategy to clean the system and weed out corruption and black money. It has a transformative impact in terms of greater formalisation of the economy and mainstreaming of financial savings into the banking system. Accordingly, the Finance Act 2017 has, introduced provisions encouraging payment through electronic clearing system like, section 13A, section 35AD, section 40A etc. Further in section 269ST also, receipt in excess of Rs.2 lakh otherwise than by way of account payee cheque or account payee bank draft or use of electronic clearing system (ECS) through a bank account is not permissible and would attract penal provisions. It is pertinent to note that debit cards, credit cards and e-wallets are being widely used to make payments and these instruments leave an audit trail. However, technically, they do not fall within the scope of "Electronic Clearing System" as per the meaning of the said term clarified by RBI through its FAQs given at https://www.rbi.org.in/Scripts/FAQView.aspx?Id=55 and reproduced below – "Electronic Clearing Service (ECS) is an electronic mode of payment / receipt for transactions that are repetitive and periodic in nature. ECS is used by institutions for making bulk payment of amounts towards distribution of dividend, interest, salary, pension, etc., or for bulk collection of amounts towards telephone / electricity / water dues, cess / tax collections, loan instalment repayments, periodic investments in mutual funds, insurance premium etc. Essentially, ECS facilitates bulk transfer of monies	<i>It is suggested that payment made through banking channels, including debit cards, credit cards and e-wallets, may be permitted under the various provisions of the Income-tax Act, 1961. Alternatively, ECS may be specifically defined in the Income-tax Act, 1961 to include reference to these modes of payment.</i>



		from one bank account to many bank accounts or vice versa. ECS includes transactions processed under National Automated Clearing House (NACH) operated by National Payments Corporation of India (NPCI)."	
	(iv)	The expression, 'amount' has been used u/s 269ST whereas the expression 'sum' has been used u/s 271DA, which may create confusion and result in avoidable litigation.	<i>It is suggested that a uniform expression, 'amount' or 'sum' of money' may be used at both the places i.e. under section 269ST as well as under section 271DA</i>
	(v)	In Note no. 83 of notes on clauses to the Finance Bill, 2017, the following amounts/ nature of transactions are excluded: - "Any receipt from sale of agricultural produce by any person being an individual or Hindu Undivided family in whose hands such receipts constitutes agricultural income " This transaction has been inadvertently omitted from the list of exclusions in section 269ST.	<i>It is suggested that the above highlighted transaction as referred to in notes to clauses be excluded from the operation of section 269ST by suitably amending the proviso to section 269ST.</i> <i>It is also suggested that the benefit of the above</i>



			<i>exclusion be not restricted only to individual and HUF but also to other assessee's also who are deriving agricultural income only.</i>



CHAPTER XXI

PENALTIES IMPOSABLE



DETAILED SUGGESTIONS

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



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



Sr. No	Section	Issue/Justification	Suggestion
			<i>the substituted basis.</i> <i>If immunity is granted under section 270A, the immunity holds valid against initiation of prosecution under section 276C. The reference may also be made to section 276CC which can be invoked in a case where there is failure to furnish return of income.</i> <i>Penalty proceedings may be permitted only when specific conditions are satisfied. e.g. the adjustment made exceeds a minimum threshold or say 10% of taxable income, etc.</i>
	c) Order to specify the specific clause of under - reported or misreported income for levy of penalty under section 270A	The newly inserted section 270A has done away with the undue discretion in the hands of Assessing Officer by imposing penalty at the rate of either 50% or 200% depending on whether the income is under reported or misreported. Certain controls may be required in the effective implementation of the new section. In order to reduce the practice of Assessing Officers treating every concealed income as misreported as well as the fact that the new section does not require recording of satisfaction before imposition of penalty proceedings (as was required under the erstwhile section 271), it is desirable that a suitable control mechanism may be put in place. Certain measures like making it mandatory for the Assessing Officers to mention in the Order that every disallowance	<i>It is suggested that suitable amendments be introduced or alternatively administrative instructions may be issued so that each order contains the specific fact of either misreported income or under-reported income or both along with the mention of specific clause of section 270A(2)/(9) against each disallowance/addition. Such measures would act as a suitable control mechanism in the absence of recording of satisfaction to initiate penalty proceedings and would also enable assessee to opt for section 270AA providing for immunity from penalty and prosecution in case income is not misreported.</i>



Sr. No	Section	Issue/Justification	Suggestion
		or addition be specified as either under-reported or misreported. Further, measures like specifying the exact clause from sub-section (2) or (9) of section 270A, in case of under-reporting or misreporting of income respectively in the order would go a long way in reducing disputes and litigation. The said measures would also make it clear to the assessee in time whether he could opt for immunity from penalty and prosecution under section 270AA in case order specifies that he has not misreported the income.	
	d) Clarification when tax increases due to re-characterisation of income under a different head of income but assessed income equals the returned income	Another issue in this regard is that section 270A is not providing clarity in a situation when assessed income is determined to be equal to returned income during the assessment proceedings but tax amount increased due to change/increase in tax rate. This may happen when a certain income returned by an assessee as a long term capital gain but the said income is assessed as income from other sources thereby leading to increase in tax amount. At present, the different clauses under sub-section (2) and (9) of section 270A does not cover the said situation. It is not clear whether the said increase in tax amount would be treated as under-reported income or misreported income.	<i>It is suggested that suitable clarification may be issued regarding the situation when tax amount is increased due to rate increase (on account of, say, change of head of income from long term capital gain income to profits and gains of business or profession or income from other sources) although the returned income and assessed income are exactly same.</i>
	e) Mere making of a claim which	Scope of penalty under section 270A has been widened and it would now include within its	<i>It is suggested that section 270A may be suitably amended so that penalty is not</i>



Sr. No	Section	Issue/Justification	Suggestion
	is not sustainable in law would not tantamount to furnishing inaccurate particulars for attracting levy of penalty	scope, claims made by the assessee but disallowed by the Assessing Officer. Where no information given in the return is found to be incorrect or inaccurate, and the assessee has disclosed all material facts relevant for assessment, he cannot be held guilty of furnishing inaccurate particulars. This principle of law has been settled by the Apex Court ruling in Reliance Petro Products' case. Therefore, mere making of a claim which is not sustainable in law would not tantamount to furnishing of inaccurate particulars for attracting levy of penalty. However, such cases are now to be included within the ambit of under reported income under the new section 270A and penalty would be attracted @ 50%.	<i>automatically attracted for merely making of a claim which is not sustainable in law.</i>
185.	Section 270AA - Immunity from Imposition of penalty	(a) Where penalty is levied on certain additions on ground of mis-reporting and certain additions on ground of only under-reporting than assessee will have to make a choice whether to file appeal or make application for immunity as he cannot file appeal on penalty levied on mis-reported income and immunity application for under-reported income.	<i>Suitable provision be inserted to solve this anomaly.</i>
		(b) Also, There is no guarantee that appeal against quantum order with application for condonation of delay after rejection of application for immunity, will be admitted.	<i>Suitable provision may be inserted.</i>



Sr. No	Section	Issue/Justification	Suggestion
186.	Section 271AAB - Penalty where search has been initiated	Section 271AAB provides for imposition of penalty @ 10% on undisclosed income found during the course of search and admitted at the stage of search. Undisclosed income not admitted at the stage of search but disclosed in the return of income filed after the search to attract penalty @ 20%. These are covered under clauses (a) and (b) of section 271AAB. In other cases, i.e. cases covered under clause (c), penalty to be imposed @ 60% of undisclosed income. Aforesaid provisions of section 271AAB are applicable till 15.12.2016 due to insertion of sub-section (1A) vide the Taxation Laws (Second Amendment) Act, 2016. Sub-section (3) provides that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied under this section. However, it may not be justified to execute prosecution proceedings where a person has disclosed such income in the course of search or before filing his return of income. Therefore, the prosecution provisions should be made applicable only in respect of cases covered under clause (c).	Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied only under clause (c) of this sub-section, and not in respect of cases covered under clauses (a) and (b). (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
187.	Section 271AAB – Relaxation in restrictions to claim the benefit of	Section 271AAB provides for imposition of penalty at specified rates where search has been initiated. The rate of penalty varies from 10% to 60 % depending on the time when the assessee	In order to provide the real benefit of imposition of penalty at the reasonably reduced rate of 10% as specified in section 271AAB(1)(a), the conditions as specified in its sub clause (i)



Sr. No	Section	Issue/Justification	Suggestion
	concessional rate of penalty @ 10%	admits the undisclosed income. Eg Penalty would be levied @ 10% in case assessee admits to undisclosed income during the course of search and makes a statement under section 132(4) along with other conditions like specifying and substantiating the manner of deriving such income at the time search proceeding is going on among other conditions. The aforesaid provisions of section 271AAB are applicable till 15.12.2016 due to insertion of sub-section (1A) vide the Taxation Laws (Second Amendment) Act, 2016. The benefit of reduced rate of 10% is mostly lost as the assessee is not in a frame of mind to specify and substantiate the manner of deriving such undisclosed admitted income at the time of search. Most assessees are under a state of shock when search is initiated at their premises and turns out to be a drain on their mental well being. The pressures exercised during the course of search makes it impossible for majority of the assessees to comply with the conditions to have the benefit of reduced rate of penalty @ 10%. Further, this provision is in the nature of settlement provision so the harsh and difficult to meet conditions like the one noted above may surely be done away with.	w.r.t specifying the manner in which undisclosed admitted income has been derived may be suitably amended and sub clause (ii) w.r.t substantiating the manner in which undisclosed income has been derived may be done away with.
188.	Section 271B - Failure to get accounts audited	Section 271B of the Income-tax Act, 1961 provides for imposition of penalty at the rate of one-half per cent of the total sales, turnover	It is suggested that the penalty under section 271B may be levied on the basis of delay in number of days in



Sr. No	Section	Issue/Justification	Suggestion
		or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years, or ₹ 1,50,000 whichever is less for failure by a person to get his accounts audited in respect of any previous year or years relevant to an assessment year or to furnish a report of such audit as required under section 44AB. It may be noted that the said provision causes undue hardship to the genuine assessee especially the small businessmen. The assessee is penalised even for a few days of delay in furnishing his tax audit report. In order to make the ease of doing business in India a reality, such high amount of penalty need to be liberalised.	<i>filing/furnishing the tax audit report which may be ₹1000 per day subject to maximum amount of ₹ 1,50,000.</i>
189.	<i>Rationalization of Section 271D & 271E</i>	As per section 271D & 271E, if a person accepts/repays a loan or deposit or specified sum/advance, as the case may be in contravention with the provisions of section 269SS/269T, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit. The penal provisions of section 271D & 271E may be restricted to maximum marginal rate of tax i.e. 30% or the slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T.	<i>It is suggested to restrict the levy of penalty to the maximum marginal rate of tax i.e. 30% or the slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T</i>



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



Sr. No	Section	Issue/Justification	Suggestion
		account, for payment of self-assessment tax before the due date of filing of return of income. Therefore, it is felt that penalty provisions should be attracted if such statements are not filed before due date of filing return of income. Further, Section 271H provides for the minimum and maximum penalty, within which range, penalty can be imposed. The discretionary powers provided to the Assessing Officer in levying a penalty ranging from Rs.10,000 to Rs.1,00,000 may lead to hardship to the assessee. Discretion element in levying penalty should be removed. Penalty may be prescribed having regard to quantum of default and the period of delay. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.	
191.	Section 271J – Request to issue guidelines for levy of penalty under section 271J for furnishing incorrect information in reports or certificates	The Finance Act 2017 has inserted a new provision by way of section 271J which provides that where the Assessing Officer (AO) or Commissioner (Appeals) {CIT(A)}, in the course of any proceedings under the Income-tax Act 1961, finds that an accountant or a merchant banker or a registered valuer (hereinafter referred to as 'professional') has furnished incorrect information in any report or certificate furnished under any provisions of the Act or	<i>In order to avoid unnecessary litigation with respect to applicability of section 271J and to ensure that no penalty is levied in bonafide cases, it is hereby clarified that following approach shall be adopted before considering the case fit for levy of penalty on a professional.</i> <i>1. While deciding upon levy of penalty, the AO/CIT(A) may consider that the penalty is</i>



Sr. No	Section	Issue/Justification	Suggestion
		the rules made thereunder, the AO or CIT(A) may direct that such professional shall pay, by way of penalty, a sum of Rs. 10,000 for each such report or certificate. The terms 'accountant', 'merchant banker' and 'registered valuer' are defined in section 271J. Further, section 273B has also been amended to provide that if the professional proves that there was a reasonable cause for the failure referred in section 271J, then penalty shall not be imposable in respect of section 271J. The object of the new provision is that the professional furnishing report or certificate undertakes due diligence before making such certification. Representations have been received by the Board stating that in the absence of any clear definition of the term "incorrect information", clarification/guidelines on scope of section 271J may be provided by the Board for proper administration of the law and curtail chances of avoidable litigation.	<i>for furnishing 'incorrect information'. While this term is not defined in the Act, the distinction between furnishing of incorrect facts and expression of professional opinion should be duly considered. No penalty should be levied where facts as stated in the report are not found to be incorrect. It may be noted that mere disagreement with the professional's opinion does not justify levy of penalty if the professional has not been found to be negligent while issuing the report or certificate. Views taken on the basis of judicial decisions and sound judicial principles should not be treated as "incorrect information".</i> 2. <i>Before commencing the process of enquiry, the materiality of the tax impact may be considered. In case the tax impact owing to incorrect information does not exceed a specified amount the enquiry should not be proceeded further.</i> 3. <i>The inquiry should preferably be made by Jurisdictional AO/CIT(A) of the Professional on being referred by the Jurisdictional AO/CIT(A) of the assessee. The penalty should be initiated by the jurisdictional AO/CIT(A) of the professional and for</i>



Sr. No	Section	Issue/Justification	Suggestion
			this purpose, if the inquiry was initiated by a different AO/CIT(A), the matter should be referred to the jurisdictional AO/CIT(A). 4. Also the possibility of bonafide typographical errors while furnishing information in electronic mode on the website of the Department should be duly considered. The matter may be decided on merits on the basis of physical copy of the report/ certificate and/or any other materials available on record or furnished by the professional. 5. Due consideration should be given to the fact that the professionals are obliged to comply with professional standards laid down by regulator of the profession (eg. Institute of Chartered Accountants of India for Chartered Accountants or Securities & Exchange Board of India for merchant bankers, etc) to exercise due diligence while issuing any report or certificate and any breach thereof may invite regulatory action against the professional. The penalty under section 271J of the Act is an additional deterrent. 6. Since the object of the provision is to ensure that the professional has



Sr. No	Section	Issue/Justification	Suggestion
			exercised due diligence before issue of report or certificate, inquiry should be made whether the professional has followed professional standards laid down by the respective regulator of the profession before issue of the certificate or report. Such inquiry should be made with prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner before initiating the penalty. The inquiry may be made by referring the matter to the respective regulator and calling for a report within a period of three to six months. The report, if any, received from the regulator should be considered before initiation of the penalty. 7. If the report from the regulator states that the professional had exercised due diligence as per professional standards, the proceedings should be dropped with the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner whose approval was sought before making the inquiry. 8. If adverse report is received from the regulator, the AO/CIT(A) may initiate penalty proceedings



Sr. No	Section	Issue/Justification	Suggestion
			against the professional. 9. If no report is received from the regulator within a period of three to six months, the AO/CIT(A) may initiate penalty proceedings against the professional. 10. In both circumstances mentioned in VIII and IX above the professional should be heard or should be given a reasonable opportunity of being heard before initiating the penalty proceedings. The AO/CIT(A) may then decide the case on merits in accordance with law. 11. Also, penalty shall not be levied on any professional in respect of any report or certificate issued by such professional in any financial year relevant to the assessment year, which falls beyond the period of limitation mentioned in respective sections under which proceedings are initiated. For instance, notice u/s 148 of the Income-tax Act, 1961 for Assessment Year 2010-11 (relevant to Financial Year 2009-10) is issued by the Assessing Officer on 29th March, 2017 and such assessment or reassessment proceedings u/s 147 of the Income-tax Act, 1961 are to be



Sr. No	Section	Issue/Justification	Suggestion
			<i>completed on or before 31st December, 2017. In such case, the Assessing Officer shall not be allowed to impose penalty on professional in respect of documents signed in financial year 2009-10 since such year is already barred by limitation after 31st March, 2017 for the professional.</i> <i>12. Where penalty is levied by CIT(A), since no specific remedy of appeal to the Appellate Tribunal has been provided to the professional in the Act, for proper administration of law and until the Act is amended suitably, it is hereby clarified that if the professional files appeal before the Appellate Tribunal against such order, no objection shall be taken on the ground that the Act does not confer jurisdiction on the Appellate Tribunal to admit such appeal.</i>
192.	Genuine hardship faced by tax deductors on account of provisions of section 276B of the Income-tax Act, 1961 attracting prosecution	Under section 276B, the consequence of failure to comply with the provisions of Chapter XVII-B is rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. The provisions of section 276B are basically intended to discourage tax deductors from retaining the legitimate government dues unjustly.	<i>It is suggested that the matter may be looked into and appropriate measures may be taken so that prosecution proceedings under section 276B are not initiated against genuine tax deductors, who have deposited the TDS voluntarily after the prescribed time limit but before service of any notice by the department. Further, certain threshold limits</i>



Sr. No	Section	Issue/Justification	Suggestion
	proceedings for delay in remittance of tax to the credit of the Central Government	However, at ground level implementation, notices are being issued for initiation of prosecution proceedings under section 276B even in cases where tax deductors have deposited the tax deducted by them voluntarily after the stipulated time but before any notice has been served upon them. This may be due to the modified guidelines issued in 2013 for identification of cases for initiating prosecution, wherein the criterion of minimum retention period of 12 months has been dispensed with. However, initiation of prosecution proceedings in cases of voluntary deposit of TDS after the stipulated time but before service of notice is causing undue hardship to genuine tax deductors. Voluntary remittance of TDS before issue of notice clearly indicates the absence of any malafide intention on the part of the tax deductors to retain the taxes due to the government. The tax deductors are, in any case, being subject to higher interest @ 1.5% per month or part of a month under section 201(1A) for the period of delay in remittance. The TDS statements submitted by them also clearly reflect the taxes deducted, the date of deduction and the date of remittance along with interest, which indicates the bona fide intent on the part of the deductors to report the correct details to the Department. However, it appears that the notices for prosecution	<i>may be prescribed to avoid genuine errors in estimations.</i>



Sr. No	Section	Issue/Justification	Suggestion
		are issued on the basis of these information provided by the tax deductors in their TDS statements. It is a settled law that prosecution proceedings are appropriate only in cases where deductors deliberately do not deposit the TDS, since Mens rea or a guilty mind is a sine qua non for attracting prosecution provisions. In this regard, it may be noted that the erstwhile service tax law which provided for a threshold limit of Rs.2 crores for initiating prosecution proceedings in case of failure to pay service tax collected to the credit of the Central Government within a period of 6 months from the date on which such payment becomes due. This implies that only if the service tax collected but not remitted within the prescribed period exceeds Rs. 2 crores, prosecution provisions would be attracted. However, section 276B of the Income-tax Act, 1961 neither prescribes any threshold limit beyond which the prosecution provisions thereunder would be attracted nor does it prescribe any retention period, after the expiry of which, prosecution proceedings would be initiated. Thus, absence of threshold limit and retention period under this provision of the Income-tax Act, 1961 causes undue hardship even to genuine tax deductors.	



CHAPTER XXIII

MISCELLANEOUS



DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
193.	Section 281B - Provisional attachment of property- Treatment of amount realized by invoking bank guarantee - Clarification required	Section 281B empowers Assessing Officer to invoke bank guarantee wholly or in part if demand raised on the assessee is not paid within time limit provided in the demand notice served. Very wide powers are conferred upon Assessing Officer. Mere non-payment within notice period will empower Assessing Officer to invoke bank guarantee. There is no clarity on the situation where the application for stay of demand is pending before Assessing Officer or any higher authority or in case of automatic stay on payment of 15% demand. The section provides that the amount collected by invoking bank guarantee is to be adjusted against demand payable and surplus, if any, to be deposited in personal deposit account of the Commissioner or Principal Commissioner in the branch of prescribed banks. Given that section 281B(2) provides for maximum period of attachment to be 2 years from the date of attachment or 60 days from the date of assessment order, whichever is later, reasons for depositing the amount in the personal deposit account of authority and not to refund the same to the taxpayer is not clear.	<i>It is suggested to clarify the aforesaid issues through appropriate amendments/circulars.</i>
194.	Signing of notices under Section 282A	Section 282A provides for issue of any income tax notice or other document without it being signed by the requisite authority. Although, the said section has	<i>It is suggested that the computerized notice / document should have a separate control like provision for a digital</i>



		been provided in the context of computerized generation of notices and other documents, this can result in widespread misuse of powers and harassment. The assessee who is willing to receive communications through email should be given notices or any other document in this form. In such case also, the signed hard copy should be sent subsequently.	<i>signature because these are legal / statutory documents and this aspect should specifically be incorporated in section 282A. The signed hard copy should in any case be sent subsequently. In respect of manual notices/documents the section should also provide that signatures will be mandatory.</i> (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
195.	Section 285BA(3) - Obligation to furnish statement of financial transaction or reportable account	Section 285BA may appropriately be amended to require information regarding the following financial transactions involving an amount over and above specified sums: (a) Payment received by tour operators exceeding a specified sum. (b) Information regarding Government tenders where the value exceeds a specified amount. This information may be provided by the concerned Government Department. (c) Sales and purchases of shares exceeding a specified amount respectively in the case of day traders. This information can be filed by the concerned brokers who are dealing with the day traders. (d) Receipt of donations by trusts or Institutions exceeding a specified sum.	<i>The meaning of “specified financial transactions” under section 285BA(3) may be widened to include within its ambit the aforesaid transactions.</i> <i>Further, in respect of the afore-mentioned transactions, where the PAN is not provided by the payer, the provisions like TCS may be made applicable to the payee. Accordingly, the payee should be allowed to collect tax at an appropriate rate. Later, in case the deductee provides PAN within a specified period to the deductor, the deductee should be provided with a certificate like TCS certificate for claiming the same in the return of income. In case the deductee does not provide PAN within the specified period, the tax so collected</i>



		Such information may be filed by the concerned trusts or institutions. (e) Educational fees paid in excess of a specified sum. The concerned educational institution should furnish the relevant information to the Department. (f) Compulsory PAN on air-ticket bookings for foreign overseas package tours. Information to form part of Statement of Specified Financial Transactions under section 285BA. Persons booking international air-tickets should be required to give their PAN while booking tickets when such foreign travel is organized as foreign package tours. This step will bring many high value transactions into the data system, which can be scrutinized for expanding the tax base. Alternatively, the person who is funding the package tour may be required to give his PAN. Those persons who are not having PAN can be asked to give a suitable declaration. To begin with, this requirement may be in respect of those persons who incur expenditure on air travel above a prescribed ceiling limit. Further, the airline companies should be required to forward such declarations to their respective Assessing Officers. This information can be included as part of the	<i>would be added to the revenue of the Government.</i> <i>(SUGGESTION TO IMPROVE TAX COLLECTION)</i>



		return under section 285BA.	
196.	Modification to the amended definition of “accountant” under section 288 of the Income- tax Act 1961 (IT Act)	The definition of accountant was amended vide the Finance Act, 2015. The reason for introducing the amended definition of an “accountant” as per the Explanatory Memorandum to Finance Bill 2015 was to avoid conflict of interest and for better governance. Infact, this amendment was brought in for the limited purpose of disqualifying a relative from conducting the tax audit report based on a CAG report finding. In case of an assessee, being a company, the disqualification for being appointed for a tax certification service applies to the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013 (2013 Act). In this regard, one can consider two situations where a CA in practice (individually or through a firm of CA) is called upon by a company to provide tax certification services as an accountant. a. Situation 1 – where the CA is the statutory auditor of the company. From the governance perspective, the Board of Directors has to approve the appointment of the	<i>In view of the above, the definition of the term accountant as contained in section 288 of the IT Act should be modified suitably to remove the applicability of section 141(3) of the 2013 Act so that:</i> a. A CA providing tax certification services to a company of which he is not the statutory auditor has the same opportunity to provide the NAS to a company as a CA who is not providing tax certification services but is providing tax advisory services and other NAS to a company of which he is not a statutory auditor to avoid unreasonable compliance requirements. b. Requirements prescribed for non-company assesses should be made applicable to company assesses to ensure parity in applicability of the eligibility requirements for being an accountant under section 288 of the IT Act. Further, “Relative” under the explanation should be replaced with “Immediate Family Members” as is used in in the IESBA Code of Ethics.



		statutory auditor for providing the Non Audit Services (NAS) in terms of section 144 of the 2013 Act. It may be noted that, in the case of a company, the statutory auditor and entities related to it in the manner specified in section 144 are prohibited to provide the specified NAS to the audit client or its holding or subsidiary. However, the list of the prohibited NAS by the statutory auditor of a company does not contain provision of tax services including tax certification services. Therefore, there is no restriction on the statutory auditor to provide tax certification services subject to approval of the Board under section 144 of the 2013 Act. b. Situation 2 – where the CA is not the statutory auditor of a company. In such a case, the CA can be appointed to provide the NAS, by the management on such terms as it consider appropriate. It is here that the amended explanation of the term ‘accountant’ under Section 288 of the IT Act becomes more onerous than the original intention of the amendment, which as stated earlier, was for the limited purpose of disqualifying a relative from conducting the tax audit report based on a CAG report finding.	



		Thus, pursuant to the amendment to the definition of “accountant” under section 288, once a CA, who is not the statutory auditor of the company, is appointed to provide tax certification services, he is being subject to the same service restrictions specified in section 144 of the 2013 Act as the statutory auditor of the company although the scope of work of tax certification is much narrower than statutory audit. The statutory auditor is required to audit the whole financial statements and opine as to whether the same present a true and fair view. However, opining on the financial statements as a whole is not required in case of issue of a tax certificate by a non-auditor wherein the scope of enquiry is specific to the section or sections concerned of the IT Act. However, the CA even in a case where the scope of service is limited to tax certification, is prohibited from providing other NAS specified in section 144 of the 2013 Act which he could have provided but for section 288 of the I T Act. Further, it is discriminatory if a CA who is providing tax certification services to a company of which he is not the statutory auditor is subject to greater restrictions for provisions of NAS than a CA who is appointed to provide tax advisory (not tax certification services) to a company of which he is not the statutory auditor.	



		In case of other than company assesses, explanation under section 288 of the Income- tax Act prescribes the eligibility requirements only for the assessee and not for any other related entities. Further, there is no prohibition from providing other NAS specified in section 144 of the 2013 Act. By making eligibility criteria for company assesses with reference to the section 141(3) of the Companies Act, 2013, the scope of restrictions have been broadened to extend to other related entities of the company as well as prohibition of NAS under section 144 of the Companies Act, 2013. A comparison of the restrictions as applicable to an accountant in the case of an assessee, being a company, and in the case of other assesses is provided in Sec 288 of the Income-tax Act, 1961. The IESBA Code of Ethics issued by IFAC / the ICAI Code of Ethics distinguishes audit services and non-audit assurance services. As there is no expression of opinion on the financial statements as a part of tax certification services, at best, such tax certification services would fall under “non-audit assurance services”. In such situations, the personal independence prohibitions/restrictions are applicable to “assurance engagement team members”. Further, NAS are subject to threats	



		and safeguards, only if the NAS relates only to the subject matter of the assurance service i.e., tax certification. Given the nature of services, it would be prudent to apply “non-audit assurance” independence policies instead of “audit” independence policies.	



OTHERS



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
197.	Relaxation from scrutiny provisions for assessees, having taxable income upto Rs.5 lakhs other than business income, filing return for the first time – Scope of relaxation to be extended	In the Budget Speech on 1.2.17, the Hon'ble Finance Minister mentioned that the assessees, having taxable income upto Rs.5 lakhs other than business income, will not be subjected to scrutiny unless there is specific information available with the Department regarding his high value transaction: “In order to expand tax net, I also plan to have a simple one-page form to be filed as Income Tax Return for the category of individuals having taxable income upto Rs.5 lakhs other than business income. Also, a person of this category who files income tax return for the first time would not be subjected to any scrutiny in the first year unless there is specific information available with the Department regarding his high value transaction. I appeal to all citizens of India to contribute to Nation Building by making a small payment of 5% tax if their income is falling in the lowest slab of Rs.2.5 lakhs to Rs.5 lakhs.” (Para 176)	<i>It is a welcome move. However, in order to encourage more people to file income tax returns, necessary provisions may be introduced, such as:</i> <i>• Individuals having taxable income upto Rs.10 lakhs may not be subjected to scrutiny for 3 Assessment Years unless there is specific information available with the Department regarding his high value transaction.</i> <i>• Individuals who pay 30% more taxes as compared to immediately preceding assessment year, may not be subjected to scrutiny for such Assessment Year unless there is specific information</i>



			available with the Department regarding his high value transaction.										
198.	Rates of Taxation	With regard to rates of taxation for individuals and HUFs, the Parliamentary Standing Committee on Direct Taxes Code had earlier observed the following: <i>“When the present Income Tax Act was enacted way back in 1961, the per capita income of this country was extremely low. During the course of five decades of the working of the Income Tax Act, the national per capita income has increased manifold, widening the scope for taxing various incomes. At the same time, the absolute number of poor has also increased manifold, warranting much larger government outlays. The aspirations of the people for better living standards and their expectation from government to deliver the same has also simultaneously increased. It is therefore, necessary that these challenges in a growing economy and a developing society are kept in mind, while formulating a new Direct Tax Law.</i> 84. A Direct Tax by definition is a levy on the incomes, profits and wealth earned and generated by individuals and entities. Thus, a direct tax by its very nature and scope cannot be imposed on everybody. It has necessarily to be a focussed levy which should reflect and tap the rising incomes and prosperity in a growing economy. The tax rates and structure should therefore be tailored in a way that will ensure sufficient buoyancy and dynamism. As the economy expands and diversifies, the tax policies cannot remain caught in a time-warp. Ways and means of augmenting revenue would have to be found not merely by broadening the base but also by deepening the trunk to tap both potential as well as concealed incomes and wealth. In this regard, there are three distinct categories of income, which require to be tapped or brought to book,	<i>In line with the recommendations of the Standing Committee on Finance on Direct Tax Code earlier and for the reasons mentioned therein, the following tax slabs are suggested:</i> <table><tr><th>Slab (lakhs)</th><th>Tax rate</th></tr><tr><td>0-3</td><td>Nil</td></tr><tr><td>3-10</td><td>10%</td></tr><tr><td>10-20</td><td>20%</td></tr><tr><td>beyond 20</td><td>30%</td></tr></table>	Slab (lakhs)	Tax rate	0-3	Nil	3-10	10%	10-20	20%	beyond 20	30%
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		<i>namely (a) untaxed/non-taxed income; (b) potential income; (c) concealed income.</i> <i>85. On the whole, the Committee would expect the tax policy and procedures to be fair, just and equitable, bringing fiscal stability at least over the medium-term, obviating the need to make changes in rates structure etc. during every Budget. Fiscal stability together with certainty will no doubt go a long way in sustaining economic growth and development. Needless to say, governance standards would, in the final count, determine the efficacy and the credibility tax policies carry with taxpayers.</i> <i>86. The Committee find from the information made available that tax collected in the income slab of 0-10 lakh is Rs. 21,094 crore and the total number of taxpayers is about 2.76 crore; while the corresponding figures for the income slab of 10-20 lakh is Rs. 10,185 crore with only 3.35 lakh taxpayers; the same for the more than 20 lakh income slab is Rs. 53,170 crore tax collected with a mere 1.85 lakh taxpayers. The Committee further find that in the income slab of 0-2 lakh, the number of taxpayers is around 2.02 crore, which decreases to 56.73 lakh in the next income slab of 2-4 lakh. With regard to the percentage of taxpayers in different income slabs, it is 89% (0-5 lakh), 5.5% (5-10 lakh), 4.3% (10-20 lakh) and 1.3% (above 20 lakh). On the corporate tax side, the tax collected in the slab of 0 to 100 crore is Rs. 44,016 crore, Rs. 23,421 crore in 100-500 crore slab; and Rs. 54,558 crore in the above 500 crore slab. The extent of revenue foregone for the above slabs has been found to be Rs. 23,200 crore, Rs. 11,779 crore and Rs. 27,895 crore respectively. The figures mentioned above only seek to confirm the view that the tax structure and the prevailing tax regime is regressive – both for individual as well as corporate tax payers. The Committee desire</i>	



		<i>that the character of the tax regime should change and it should be made more progressive. This would entail greater relief for small taxpayers – both individuals and corporate and moderately higher rates for taxpayers in the higher bracket.</i> <i>87. The Committee find it astonishing that almost 90% comprise of individual taxpayers in the 0-5 lakh income slab without commensurate tax yield; which translates into nearly 3 crore assesees. In a belated recognition of this paradox, the Department has exempted taxpayers in the lower income slab (0-5 lakh) from filing tax returns, thereby reducing the Department's processing burden. The Committee find it absurd that the Department should diffuse their energies and spread their resources thin over handling such a large number of individuals with low income potential. The argument that more taxpayers have to be brought within the tax net for widening the tax base can hold water only to the extent that this approach brings in more taxpayers and tax revenue from the higher income brackets, rather than simply adding to the numbers in the lower segments.</i> <i>88. Keeping in view the inflationary trends in the economy and the imperative to leave more disposable incomes in the hands of individual tax payers, particularly those in the lower income bracket, the Committee would recommend that the tax slab attracting „nil“ rate, that is, full exemption from tax on income should be raised to three lakhs from the proposed two lakhs. Higher exemption limit may be considered for women and senior citizens. The age for senior citizens should be relaxed from 65 years to 60 years. As reasoned earlier, higher exemption limit would go a long way in minimising the compliance and transaction costs of the Income Tax Department, which can now focus their attention and re-orient their resources on the higher income groups, untaxed or concealed incomes, and categories and sectors that are</i>	



		avoidance or evasion prone. The revenue gap, if any, could be easily bridged by way of stringent measures to curb and bring to book unaccounted money and through realisation of huge tax arrears and by way of savings from the proposed transition to the investment-linked incentive / exemption regime. 89. Thus, in the light of reasons cited above and in pursuance of the well-recognised and widely accepted rationale of moderate tax rates inducing better tax compliance and with a view to giving some relief to the small tax payers, the Committee would recommend the following revised tax slabs : <table><tr><th>Slab (lakhs)</th><th>Tax rate</th></tr><tr><td>0-3</td><td>Nil</td></tr><tr><td>3-10</td><td>10%</td></tr><tr><td>10-20</td><td>20%</td></tr><tr><td>beyond 20</td><td>30%</td></tr></table>	Slab (lakhs)	Tax rate	0-3	Nil	3-10	10%	10-20	20%	beyond 20	30%	
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10-20	20%												
beyond 20	30%												
199.	Reduction of 1% in rate of taxation in case of company assesseees with total turnover/gross receipts of upto Rs. 5 crore – Reduction in rate may be made applicable to Firms/ Limited Liability	The Finance Act, 2016 introduced a tax rate of 29% of total income to (domestic) company assesseees provided its total turnover or the gross receipts in the previous year 2014-15 does not exceed five crore rupees. This reduction in corporate tax rate is a step in the direction of implementing the proposal in Finance Minister's Budget Speech during the Union Budget 2014-15 on 10th July, 2014 wherein he had indicated reduction in rate of corporate tax along with gradual phasing out of deductions & exemptions. It may be noted that the rate of tax applicable to firms including limited liability partnerships is 30%. Most of the deductions and exemptions where phasing out has been made by provision of sunset clause as per the Finance Act, 2016 are applicable to both companies as well as firms/LLPs. Therefore, the benefit of reduction of 1% in rate of tax may be passed on to such assesseees as well. Further, if the said rate of 29% is also made	<i>It is suggested that the benefit of reduced rate of tax of 29% of total income for small domestic companies may also be extended to firms and Limited Liability Partnerships as well since most of the deductions and exemptions phased out as per Finance Act, 2016 via sunset clause are applicable to both companies as well as firms/LLPs, so as to provide a level playing field amongst these forms of business.</i> <i>Further, the limit of Rs 5 crore for determining the eligibility to avail</i>										



	Partnerships also	applicable to firms and LLPs, it would facilitate ease of doing business in any form and not particularly restrict such facility to the small corporates. Further, it may be noted that firms and LLPs are also incorporated under a statute and are subject to certain compliance requirements as provided in the Partnership Act, 1932 and Limited Liability Partnership Act, 2008, respectively. It is also suggested that the prescribed turnover of Rs 5 crore may be considered for previous year 2015-16, being the previous year immediately preceding the P.Y.2016-17, relevant to A.Y.2017-18.	<i>the reduced rate may be with reference to P.Y.2015-16, being the previous year immediately preceding the current previous year, namely, P.Y. 2016-17, relevant to A.Y. 2017-18.</i>
200.	Issues arising from applicability of Companies Act, 2013: a) One person Company (OPC):	Section 2(62) of the Companies Act, 2013 has introduced the concept of “One Person Company” which means a company which has only one person as a member. Section 2(31) of the Income-tax Act, 1961 which defines person has to be amended to include within its ambit an OPC. Section 2(68) of the Companies Act, 2013 defines “private company” to mean a company having a minimum paid-up share capital as may be prescribed, and which by its articles,— (i) restricts the right to transfer its shares; (ii) except in case of One Person Company, limits the number of its members to two hundred: <i>Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:</i> <i>Provided further that—</i> (A) persons who are in the employment of the company; and (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in	<i>It is suggested that OPC should be treated like any other company for taxation purposes. The concept of separate legal entity of OPC should be followed for Income tax. However a specific clarification may be inserted in the Income-tax Act as to allowability of remuneration paid by OPC to member.</i> (SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)



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		<i>the number of members; and</i> <i>(iii) prohibits any invitation to the public to subscribe for any securities of the company;</i> From the above it can be inferred that one person company will be required to comply with the provisions applicable to private Limited Company. However, section 18 of the Companies Act, 2013 provides for conversion of companies already registered from one class to other class under that Act. This implies an OPC can be converted into a Private limited or a public Limited Company provided that conditions are fulfilled.	
	b) Reopening of accounts on Court's/ Tribunal order under section 130 of the Companies Act, 2013	b) Section 130 of the Companies Act, 2013 provides for revision of the books of accounts and the financial statements of the Company on application made by the Central Government, the Income-tax Authorities, the SEBI and any other statutory regulatory body or authority or any person concerned. Such revision can, however, be done on an order by a court of competent jurisdiction or the Tribunal to the effect that the relevant earlier accounts were prepared in a fraudulent manner or the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of the financial statements. Before passing the order notice of the same will be given to the Income-tax authorities. This revision may, however, give rise to three situations namely, no effect on the profits, higher profits or lower profits. These profits have a direct impact on the computation of income of Companies due to applicability of section 115JB of the Income- tax Act, 1961. In case the profits are higher, the Department can issue a notice under section 147 of the Income-tax Act. The issue will arise where the profits were inflated by the company and due to the reopening of accounts, the actual profits	<i>a) A provision be inserted to provide that in cases where the financial statements have been revised by virtue of section 130 of the Companies Act, 2013, no refund shall be granted in case such revision has the effect of lowering of profits of the company.</i> <i>b) A specific provision is required in the Income-tax Act to take care of adjustments required in taxable income due to revision of accounts. The provision may be in line with Section 155 of the income-tax Act.</i>



		are lowered. The company in such a case may apply for refund by filing a revised return of income within the time limit prescribed under section 139(5) of the Income-tax Act, 1961.	
	c) Difference in the definition of “related party” in Companies Act, 2013 and Income tax Act, 1961	The concept of related party is relevant for defining “specified domestic transactions” and “international Transactions” in the Income-tax Act, 1961. The Companies Act, 2013 also defines “covered transactions” and “related party” However, the definition in both the cases is different.	<i>There is a need for alignment in the scope of related parties in Companies Act, 2013 with that of the Income-tax Act, 1961.</i>
	d) Amalgamation	a) Section 72A of the Income-tax Act, which deals with treatment of unabsorbed losses and unabsorbed depreciation, in case of amalgamation, is restrictive in its application. Presently benefits of Section 72A are available only to company owning industrial undertaking or a ship or a hotel or banking company. Due to this restriction, other sectors namely service sector and real estate sectors are not eligible for benefits in the form of handing over of loss from one company to another.	<i>It is suggested that sectoral restrictions u/s 72A may be removed and provisions of this section be made applicable for all the sectors.</i>
		b) Presently MAT credit u/s. 115JAA cannot be carried forward by the amalgamated company.	<i>The Income-tax Act needs to be amended so as to allow carry forward of MAT Credit in the hands of amalgamated company for remaining number of years.</i>



		c) Companies Act, 2013 has permitted amalgamation of Indian company with foreign company. However, exemption from capital gains u/s 47 of the Income-tax Act is available only when amalgamated company is an Indian Company.	Clause (vi) of Section 47 needs to be amended in order to make amalgamation with foreign company also a tax neutral transaction. Similar amendment is required in clause (vii) of Section 47 also, so that shareholders are not taxed when shares of amalgamated company are received and amalgamated company is not an Indian company.
	e) Amalgamation and Demergers – Limitation on powers for assessment of cases dealing with Amalgamation and Demergers effected under the Companies Act, 2013	In recent times, tax litigation in relation to amalgamation and demerger has increased many folds. Certain examples of such litigations are as under: a. Tax benefits of amalgamation and demerger have been denied on the ground that the assessee has not fulfilled the conditions stated under section 2(1B) in case of amalgamation and section 2(19AA) in case of demerger; b. Litigation as to whether the transaction is in the nature of amalgamation, demerger or slump sale under the Income-tax Act; c. In certain cases, the Tax department has alleged that the scheme was a Tax avoidance device; d. Issues relating to carry forward of unabsorbed losses in the hands of transferee company, availability of credit for TDS and advance tax paid by the transferor company on behalf of transferee company, etc.	Since now under the Companies Act, 2013, at the time of approval of Scheme, adequate representation has been given to the Income Tax Department, corresponding amendments should be made in Income-tax Act, 1961 (may be by way of introduction of a separate chapter or by introducing new section dealing with these kind of assessments) to the effect that the tax issues under the Income-tax Act, 1961 relating to amalgamations/demer



		e. In certain cases, the AO has invoked provisions of Section 28(iv) in the hands of amalgamated company on the ground that the amalgamated company has acquired Reserve & Surplus from its amalgamating company under the scheme of amalgamation. The same was considered as a perquisite by the AO and taxed under section 28(iv) of the Income-tax Act after the scheme has been approved by the High Court. Now, under Section 230(5) of the Companies Act, 2013, it is mandatory for the companies to send a notice of amalgamation and demerger to the income-tax department. Under the old Companies Act, 1956, such notice was not mandatorily required. Hence, now, such notices would ensure that the income tax department can make a representation in relation to the amalgamations and demergers before the same is approved.	<i>gers in the hands of the transferor company, transferee company and the shareholders of transferor/transferee company should be examined and adjudicated by the tax department at the stage of making representation itself. In such a case, the Assessing Officer shall not be allowed to re-examine and re-adjudicate the issues relating to amalgamation or demerger at the time of scrutiny assessment or reassessment.</i> <i>The said amendment would have following positive effects:</i> <i>a. Reduction in tax litigation in respect of amalgamations/de mergers</i> <i>b. The Assesseees would be saved from hardship of the double scrutiny – one at the time of filing of the scheme and second at the time of assessment.</i> <i>c. Certainty as to the tax treatment in relation to</i>



			<i>amalgamations and demergers, which will lead to improvement of investors' sentiment;</i> <i>d. Safeguard of shareholder's interest since they would be aware about potential tax exposures to them and the company in respect of the amalgamation and mergers and would consider the same while voting in respect of the same;</i>
201.	Introduction of Group consolidation on tax	Section 129(3) of the Companies Act 2013 requires the preparation of a consolidated financial statements where a company has one or more subsidiaries. Further, countries like United States, France, Australia and New Zealand have adopted a tax consolidation or combined reporting regime. Tax consolidation, or combined reporting, is a regime adopted in the tax or revenue legislation which treats a group of wholly owned or majority-owned companies and other entities as a single entity for tax purposes. The head entity of the group is responsible for all or most of the group's tax obligations (such as paying tax and lodging tax returns). The aim of a tax consolidation regime is to reduce administrative costs for government revenue departments and to improve the quality of tax assessment.	<i>It is suggested that on similar lines, the tax consolidation regime may be introduced in India as well.</i>



		The regime also reduces compliance costs for corporate taxpayers. For companies, consolidating can help reduce taxable profits by having losses in one group company reduce profits for another. Assets can be transferred between group companies without triggering a tax on gain for the company receiving assets, dividends can be paid between group companies without incurring tax liabilities.	
202.	Rationalization of MAT rates	The purpose behind introduction of MAT was to bring all zero tax companies within the tax net and to neutralize the impact of certain benefits/incentives. The Finance Minister while introducing the Finance Act, 2015 announced to reduce the rates of corporate tax from 30 per cent to 25 per cent in a phased manner. The Finance Minister further stated that the reduction of tax has to be necessarily accompanied by rationalisation and removal of various kinds of tax exemptions and incentives for corporate taxpayers. The Finance Act, 2016 has also amended the relevant provisions of the Act that would ensure the phasing out of deductions and incentives available to companies to realign with the governments' decision of reducing the corporate tax rates as mentioned above. Similar phasing out has been done by the Finance Act, 2017.	<i>Since government has already started implementing phase out of exemptions and incentives, it is suggested that the levy of MAT should be withdrawn.</i> <i>Without prejudice to above, since the exemptions and incentives being phased out for corporate taxpayers, it would be necessary that the MAT provisions, which were introduced to bring in the tax net the corporate taxpayers which were otherwise not being taxed, should also be streamlined.</i> <i>It is suggested that with the phasing out of exemptions and incentives and reduction of corporate tax rates, the burden of MAT should also be gradually reduced from the current levels of 18.5 per cent to a rate which will match with phasing out of tax</i>



			exemptions and incentives.
203.	Phasing of exemption/ incentives vis-à-vis industry needs	The Finance Minister while introducing the Finance Bill, 2015, proposed to reduce the rate of corporate tax from 30 per cent to 25 per cent over the next 4 years. It was also stated that the process of reduction has to be necessarily accompanied by rationalisation and removal of various kinds of tax exemptions and incentives for corporate taxpayers, which incidentally account for a large number of tax dispute. Further, the Finance Act, 2016 has initiated the process of phasing out of various deductions and has also reduced the rate of tax in case of a domestic company to 29 percent in case where the total turnover or gross receipts in the previous year 2014-15 is less than INR 5 crores. The reduction of corporate tax of one percent is directly correlated to the company satisfying the threshold relating to turnover/gross receipts and does not seem related vis-à-vis the phase out process of deductions initiated. Similar phasing out has been done by the Finance Act, 2017.	<i>The process of phasing out of exemptions and deductions should not be done across sectors. There are various sectors where the turnaround time for the companies to reach a break even and start earning profits takes longer than some other industries. Some of the sectors would take long for the completion of projects eg deduction under Section 80-IA(4) of the Act dealing with development, operation and maintenance of an infrastructure facility, deduction under Section 80-IAB of the Act dealing with development of special economic zone, deduction under Section 80-IB(9) of the Act dealing with production of mineral oil and natural gas, etc. The government and health care sectors as well have long gestation periods. There would be certain entities which would have recently commenced commercial operations, will have to tackle phasing out</i>



		<i>much faster than anticipated and planned. Thus, the phase out of deductions and exemptions should be applicable to select industries and based on long-term plans and considering a sensitivity analysis of the related industries.</i>



CHAPTER VIII
of the Finance Act, 2016
EQUALISATION LEVY



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
204.	Chapter VIII of the Finance Act, 2016 - Equalisation Levy Issues to be addressed	The Finance Act, 2016 has inserted a new Chapter VIII titled "Equalisation Levy" to provide for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India. In other words, the Finance Act, 2016 enacted a levy of 6% on consideration paid or payable by an Indian resident carrying on business or profession, or by an Indian permanent establishment of a non-resident to a non-resident not having a permanent establishment in India, for providing specified online advertisement services. Certain issues arising from the same are as below: - The responsibility for payment is cast on resident payer to deduct and deposit the levy. Interest and penalty would be levied for delay or failure of compliance. This would involve additional cost of compliance to Indian businesses. It is an indirect levy. - The equalization levy is a separate levy under the Finance Act, 2016 and will not be part of the Income-tax Act, 1961. This results in defeating the option available to a non-resident of choosing the more beneficial option between the Treaty and the Income-tax Act, 1961. - Also, the non-resident may not be able to claim tax credit of this levy in his country of residence, if the DTAA allows foreign tax credit in respect of tax paid under the Act and not in respect of similar taxes paid	<i>In view of the issues detailed, it is suggested that suitable amendments may be carried out in the Chapter VIII of the Finance Act, 2016. Particularly, after 1 April 2017, GAAR will ensure that artificial avoidance of taxable presence is not likely to remain tax protected for the non-residents.</i>



		which are outside the ambit of the Income-tax Act, 1961. It is recommended that the provision be withdrawn or be enacted under Act.	
205.	Equalization levy	The Finance Act, 2016 has introduced a levy of 6% on consideration paid or payable by an Indian resident carrying on business or profession, or by an Indian permanent establishment of a non-resident to a non-resident not having a permanent establishment in India, for providing specified online advertisement services.	<i>The responsibility for payment is cast on resident payer to deduct and deposit the levy. Interest and penalty are levied for delay or failure of compliance. This involves additional cost of compliance to Indian businesses.</i> <i>The equalization levy is a separate levy under the Finance Act and is not a part of the Act. The non-resident liable to equalization levy will not be able to claim credit for the levy paid in India in the country of his residence. This will lead to double taxation of the same income.</i> <i>Non-residents are liable to pay service tax in India on the above receipts.</i> <i>It is recommended that Chapter VIII should be omitted.</i>



PART B

SUGGESTIONS FOR IMPROVING TAX ADMINISTRATION AND CITIZEN SERVICES



DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
206.	Tax consolidation Scheme	In India, separate entities are incorporated based on their specialization in various lines of businesses (like manufacturing, trading, retail, infrastructure etc.) by the parent company. Separate companies are incorporated to attract investors which suits their needs. Investors are more likely to invest in a well-structured organisation. Because of commercial compulsions, the business houses are forced to have many subsidiaries under one parent. The group as a whole and the tax Department face many challenges. Some of them are:- • Each Entity is considered as separated entity and therefore required to file a separate income tax return, involving huge cost of Income Tax compliance by tax payer. • Each entity is assessed/scrutinised separately resulting in litigation cost for each entity. Significant administrative costs are incurred by the Income tax Department in keeping track of records and	<i>In view of the aforesaid benefits it is suggested that a tax consolidation scheme may also be adopted in India. This would create a positive impact on business with significant reduction of compliance and litigation cost.</i>



<i>Sr. No.</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		assessing multiple subsidiaries. • Apart from cost, a lot of efforts are required by both tax payer as well as Income tax Department for undertaking compliance. Tax consolidation or combined reporting is a regime adopted in the tax or revenue legislation of a number of countries which treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes. The head entity of the group is responsible for all or most of the group's tax obligations such as paying tax and lodging tax returns. In terms of mechanics, all transactions between the group companies of the consolidated group are ignored for tax purposes. <u>Benefits –</u> i. Tax consolidation scheme would help to centralize the planning and payment of tax by the parent company. ii. It is common in India that the parent company engaged in various lines of businesses incorporate	



Sr. No.	Section	Issue/Justification	Suggestion
		many subsidiary companies. Since the market is volatile, it may happen that one company is incurring losses and other is earning profits. At a group level, the tax outgo would be more as under the Income-tax Act at present, there are no provisions to set off loss of one group-company with another profit making group-company. Under tax consolidation, the company can set off the losses of one inter group company with the profits of another company. Tax consolidation would take care of such situations which facilitate development of new businesses of challenging nature such as retail or telecom. Where financial risks are isolated in a new company but at the same time tax revenues and losses can be consolidated. iii. Any unused foreign tax credit by one company can be used by the other affiliates within the group. iv. Currently, in the Income-tax Act, 1961 the Domestic	



Sr. No.	Section	Issue/Justification	Suggestion
		Transfer Pricing provision requires all the intercompany transactions to be at Arm's Length Price and need to be reported. Under the consolidated tax scheme such intra group transactions would be net off and thereby will reduce the time and compliance cost of the tax payer and administrative cost of the Income-tax Department. v. In group taxation all transactions between group companies are ignored for tax purposes. This will help in tax free movement of assets across the group which would aid in internal restructuring. vi. In India, each company is individually liable for separate tax assessments. By introducing the tax consolidation scheme, the parent company would act as an agent in all the tax matters. vii. The number of litigations pending with the tax department would also reduce and thereby reducing the administrative cost of the Income-tax Department.	



Sr. No.	Section	Issue/Justification	Suggestion
		viii. In the long run such a regime would not negatively impact the overall tax revenues as tax offset of carry forward losses/depreciation is already allowed under the Income-tax Act, 1961, accordingly any tax offset claimed by the individual taxpayer would be offset when the aggregate approach for the economy as a whole is considered. ix. Member of the group companies obtaining for tax consolidation can enter into an arrangement with Income Tax Department/ CBDT for a nominated member of the group to be in liaison with Income Tax Department/ CBDT, such that all payments of tax flow through that nominated company. x. It is believed that for capital intensive sectors like infrastructure and financial services introduction of such a progressive tax regime would be beneficial and fair to the taxpayer. xi. The tax consolidation regime has been adopted in	



Sr. No.	Section	Issue/Justification	Suggestion
		tax legislations of a number of foreign countries like Australia, France, Germany, Italy, Japan, Korea, Spain, USA etc. These countries have not only successfully implemented the said regime but also created a positive impact on business with significant reduction of compliance and litigation cost. xii. This will create a positive impact on business and provide a level playing field to the Indian companies. The tax consolidation regime also endorses the Government's efforts of "Ease of doing business in India" and assist in aligning the business and tax objectives of the industry. xiii. No. of tax exemptions are being reduced and very soon, no deduction/exemption will be allowed in computing taxable income. It is very logical to introduce tax consolidation scheme. Many mergers, demergers which are being done only to take advantage of tax losses will not be required. A snapshot of the tax consolidation regime in various	



Sr. No.	Section	Issue/Justification	Suggestion
		jurisdictions is summarized in Annexure A	
207.	<i>Need for educating tax payers in the right manner</i>	Till date all government awareness programmes for education of tax payers adopt the stick approach like making them aware of penalties and prosecution under the Income-tax Act, 1961. This approach may not yield the desired results. There appears to be a need to change the way of educating the tax payers. The tax payer needs to be treated like a customer for the Income tax department as suggested in Tax Administration Reform Commission report by Mr. Shome earlier. The new age tax payers as well as older assesseees need to be told the benefits of paying the taxes honestly, the impact it will have on them. The Government should organize tax awareness programmes for the assesseees/tax payers to educate them about the benefits of paying the taxes honestly and the need to discharge their statutory obligations in a proper & timely manner.	<i>There is a need for educating tax payers about the benefits that will directly accrue to them if taxes are paid honestly. Some of the suggestions in this respect are as follows:</i> <i>a) Honest payment of taxes will lead to a better credit rating for the assesseees which will help them in getting various loans at much cheaper rates and with relative ease.</i> <i>Such loans provided by financial institutions in the organized sector will impact their personal as well as professional life. Their business will grow if they are able to get working capital loans as well as loans for purchasing specific assets. Similarly, they may get housing loans and have better residential facilities. All this would be possible only if they declare their true income in Income Tax Returns and pay taxes</i>



Sr. No.	Section	Issue/Justification	Suggestion
			thereon. Every loan provider looks at the ITR first to gauge the paying capacity of the assessee. b) Cash and other incentives may be provided for compliances related to Income taxes. Eg 1% or any specified amount may be provided as a cash incentive to Tax deductors as well tax collectors in case of 100% accuracy in timely depositing of taxes and filing of TDS/TCS returns thereof. c) Government should organize tax awareness programmes for the assesseees/tax payers to educate them about the benefits of paying the taxes honestly and the need to discharge their statutory obligations in a proper & timely manner
208.	Targets for collection of taxes - Not essential	India adopts a progressive system of taxation where the tax rate depends on the level of income earned during a financial year. Taxes paid by the taxpayers are utilized for the betterment of the nation as a whole. Since a majority portion	Since a majority portion of direct taxes is paid to the credit of the Government through TDS and advance tax, it is suggested that no targets should be set by the Department for collection of taxes. In fact,



Sr. No.	Section	Issue/Justification	Suggestion
		of direct taxes is paid to the credit of the Government through TDS and advance tax, the possibility of evasion of tax gets meager in the private sector. Also, today the assessee wants to voluntarily comply with the existing laws to avoid any hassles. In such a scenario, it is difficult to understand as to why targets are set for Assessing Officers for collection of tax. The Government is not a profit making organization. It belongs to the people of India, works for the people and is formed by the people of India. In order to achieve the yearly targets, all means, fair and unfair, are being adopted. There have been instances which have been reported to us as to how, in order to complete targets the genuine assesses are being harassed. This creates an unhealthy environment. One cannot enforce on collection of taxes when there is no income and then the taxpayer has to go round and round to get a refund of the extra taxes paid by him.	<i>internal mechanism is to be developed to ensure adherence of the timelines mentioned in the Citizens charter of the Department about performance of services and adherence to the timelines should be made as a part of performance appraisal of the concerned officer.</i>
209.	Mandatory filing of return of income by Non-residents owning a property or asset in India	Most Income tax return forms contain a Schedule FA where the resident assessee has to provide details of any asset located outside India (including financial asset) or signing authority in any bank account located outside India. However,	<i>Filing of income tax return should be made mandatory for all Non-residents owning a property or asset in India.</i>



Sr. No.	Section	Issue/Justification	Suggestion
		similar provision for disclosing details of assets located in India is missing for Non-residents. The Non-residents having one or more properties or asset in India should be required to file return of income with regard to income received or accrued or arisen or deemed to accrue or arise in India. Even if the return filed is of nil income, the Department will have the details/ statistics of all such properties held by non-residents in India which may be useful for taking informed decisions with regard to non-residents as a whole.	
210.	Verification of all income-tax returns	There are classes of persons who are filing income tax returns but are not declaring their income properly. Either the income is suppressed or various deductions are being claimed which are not legally permissible. With the increase in the work of the Department it is not practicable to scrutinize each and every return. Taking into consideration this aspect the person filing the return takes a calculated risk. Further, basic deductions provided by the Act like section 80C (Rs.1,50,000), section 80D (25,000/30,000), section 24(b) (Rs.2,00,000) being claimed by the individuals and HUFs, in large numbers, have huge revenue impact. To check on the admissibility of the claim for deduction, no proof of	<i>Since non-verification of admissibility of basic deductions provided in sections 80C, 80D and 24(b) have huge revenue impact, it is imperative to have a certification /verifications of all claims of deductions under section 80C, 80D, 24(b) and the like. In this verification, not only the arithmetical accuracy but the admissibility of the claim regarding the expenditure incurred, income earned or investment made on the basis of the evidence collected from various sources will also be verified. Since this work is voluminous, the same will</i>



Sr. No.	Section	Issue/Justification	Suggestion
		investment is called for by the assessee. Today as per e-filing website of the department, there are 1.54 crore assesseees who have filed return for ITR-1,2,3,4 and 4S online for the FY 2017-18 and are thus expected to have an income of Rs.5,00,000 or more. Considering the slab rate of 10%, the minimum revenue impact is $3,80,000 \times 10.3\% \times 1.54$ crore is approximately Rs.60275 crores. In case the applicable rate of tax is 20.6%, the revenue impact is approx. Rs.120551 crores. In case the applicable rate of tax is 30.9%, the maximum revenue impact is Rs. 180826 crores. To address this, it is important that all the returns filed are thoroughly checked and cross-verified with the information collected through AIR/SFT and other sources by the Department. This process is entirely different from the scrutiny process. In this verification, not only the arithmetical accuracy but the admissibility of the claim regarding the expenditure incurred, income earned or investment made on the basis of the evidence collected from various sources will also be verified. Since this work is voluminous, the same will also be required to be out-sourced	also be required to be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas. (SUGGESTION TO IMPROVE TAX COLLECTION)



Sr. No.	Section	Issue/Justification	Suggestion
		preferably to the professionals understanding the law better and who are in a position to identify the grey areas. Although the chartered accountants, through whom majority of the returns are filed, ensure the correctness of the claim, the law does not recognize the same. Thus, the chartered accountant is questioned by the assessee, when documents are asked for. In the interest of the revenue, it is imperative to have a certification of claims of deductions under section 80C, 80D, 24(b) and the like. This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware that the return being filed would be subject to a verification process and he cannot afford to take the liberty of making adjustments which are legally impermissible.	
211.	<i>Forms of Income tax return to incorporate details of tax payments made under other legislations</i>	Income tax return forms are such that they have reasons to capture some Information about other tax payments like service tax, VAT etc. The return form should be made more elaborate so as to give comprehensive information about the other indirect taxes paid. Thereafter, the said information be shared with the relevant	<i>It is suggested that the forms of income tax shall incorporate all the relevant details of tax payments made under other legislations like central excise, VAT, service tax etc.</i> <i>(SUGGESTIONS TO INCREASE THE TAX BASE)</i>



Sr. No.	Section	Issue/Justification	Suggestion
		Department of the Government for verification. This will ensure that the data being reported by the assessee matches with the data provided by him in other Departments. In the long run, it will improve the quality of the data being received in the return forms as the assessee will not take the risk of mentioning the wrong data.	
212.	<i>Consolidation of multiple reports to be issued by Chartered Accountants in a single format</i>	As per the current provisions, an assessee has to file multiple audit reports in different formats as per the statutory requirements. For a simplified tax regime, a single audit form should be introduced which will incorporate or consolidate multiple audit reports/ certificates required to be issued under various sections of the Income-tax Act, 1961.	<i>Multiple reports to be issued by chartered accountants be compiled and a single form of audit/ certificate be prepared. The said format may have multiple annexures i.e. existing formats in different sections.</i> <i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i>
213.	<i>Reconciliation of Interest payments by banking sector with TDS returns of Banks</i>	Interest payments by banking sector may be reconciled with the TDS returns of Banks submitted with respect to section 194A of the Income-tax Act, 1961. For example, as per the balance sheet of SBI on 31.03.2017, it held Rs. 11,13,000 crores of Term deposits from others. It had paid more than Rs.1,05,000 crores of rupees as Interest.	<i>It is suggested that such exercise of reconciliation be undertaken by the Income tax department to identify major defaults in respect of TDS on interest other than interest on securities.</i>



Sr. No.	Section	Issue/Justification	Suggestion
		Taking it as a sample study since all the banks are not of the same size, one can estimate interest commitment paid in this country from all the banks and NBFCs exceed Rs.10 Lakhs crores. It means TDS on interest alone shall not be less than Rs.1,00,000 crore.	
214.	Generation of Form No. 60 through system	Form No. 60 are used by persons who do not have a Permanent account number and who have entered into transactions specified under Rule 114B of the Income-tax Rules, 1962. This form is however being misused, since there is no mechanism to track and control those persons who wrongly fill the form to avoid obtaining PAN. Considering the fact that presently PAN is allotted in less than 7 days from the date of online application, Form No. 60 has lost its relevance. Further, filling of PAN should be made mandatory in Form No. 15G/15H without which such forms should not be accepted or given benefit of.	<i>Since there is no central system to locate multiple forms 60, filled by a particular person, it is suggested that the filing of the same be made electronic in line with Notification 76/2015 dated 29.9.2015 in respect of Form 15G and 15H. On the basis of particulars received from these forms, the banks should be mandated to punch the said particulars in the e-form which will generate a unique number. This system if put in place will ensure genuine usage of these forms.</i> (SUGGESTION TO INCREASE THE TAX BASE)
215.	A single ITR form to replace all ITR forms	At present, we have different ITR forms for different assessee which make filing of ITR a cumbersome task. There should be a single form for all the assessee so that filing of return will be done in a simplified & effective manner.	<i>A single ITR form instead of ITR 1,2, 3,4, 5,6 and 7 should be prepared. The common fields in all ITR can be clubbed and Income under the various heads of income is restricted in the form of Annexures. The assessee should click and fill only</i>



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			<i>the annexure which is relevant for him. This would amount to simplification in true sense.</i>
216.	<i>PAN card to be chip enabled for certain transactions required to be reported in TDS/TCS returns</i>	The misuse of PAN details of assessees is prevalent since long. There is a need to provide new age chip enabled PAN cards so as to prove the identity of the concerned person rather than using the photo copy of the card. Recently, a number of cases have come to the notice where the PAN of the assessees used at Photo ID was publically available at places like railway stations (in charts) are found to be misused and quoted in the TDS/TCS returns. eg The Finance Act, 2012 through an amendment in section 206C made it mandatory to collect tax at specified rate in case of any person selling jewellery or bullion. The seller in this case has to file TCS returns quarterly where currently PAN of all the buyers need to be reported. In order to hide / accommodate the information w.r.t the high net worth individuals not quoting their PAN at the time of purchase in order to evade tax, fake PANs are being mentioned	<i>In order to curb the misuse of PAN to carry out benami transactions and the like, it is suggested that the PAN be made chip enabled and be required swiping in the machines specifically designed for it so that the transactions carried on by him are recorded in the same and the assessee is able to prove the transactions entered into by him.</i>



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		in the TCS returns. Such sellers are able to get the PAN numbers by various means as mentioned above. In such cases, the assessee whose PAN has been quoted faces severe hardship as he may not have that much income to substantiate the expenditure quoted against his PAN. It will also be difficult for him to prove his innocence. Thus, there is a need to curb such practice and new age PAN cards be issued in order to prove the identity of the person carrying the transaction.	
217.	Gaps in electricity generations	In order to provide Environmental friendly solutions and Low-cost availability of electricity to end user, alternate & clean energy resources may be promoted by way of additional exemptions/incentives if, the project gets completed on time.	<i>It is suggested that concessions or additional tax benefits may also be provided where a new building (resident/ commercial/ hotel etc) installs a solar energy devices & rain water harvesting instruments.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
218.	Allowability of Interest paid under Income-tax Act, 1961	Presently, interest paid by the Government to an assessee is chargeable to tax. However, interest paid by the assessee to the Government under various sections is not allowed as deduction while computing the total income. Interest paid by	<i>Interest paid by the assesseees to the Government under various sections of the Income-tax Act should be allowed as deduction in computing total income. If the assessee does not</i>



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		the assessee is for the use of money by him and is compensatory in nature.	<i>have business income, interest should be allowed under the head 'Income from other Sources'. Alternatively, the interest received by the assessee on refund should be exempt from tax.</i>
219.	Issues regarding PAN allotment	For filing of return, it is mandatory to have PAN. A person applying for PAN has to give his details in a prescribed form & the same will be allotted to him by the Income Tax Department. Earlier, when the assessee identification system was based on "GIR Number" i.e. "General Index Register Number" that used to be allotted, "Free of Cost", by the concerned Income Tax Officer who had a jurisdictional authority to assess the assessee. Later on this was switched over to the era of "Permanent Account Number", under the authority of Section 139A, substituting the old one, by Finance Act, 1995, with effect from 1-7-1995 and by insertion of New Rule 114, by replacing the old Rule 114, with effect from 1-4-1976. Due to some reasons, this function of receiving applications and allotment of Permanent Account Number and issue of PAN Card was	<i>It is suggested that:</i> a) <i>The person entrusted with the work of verification should possess sufficient knowledge & understanding of the provisions of the Income-tax Act so as to complete the assigned work in a timely manner.</i> b) <i>If the application of the applicant is withheld by NSDL, NSDL should inform the applicant the reasons thereof.</i> c) <i>If there are any queries/doubts regarding details provided in form no. 49A, NSDL should clarify the same with the applicant.</i>



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		transferred to NSDL. With this switch over, now the applicants are required to pay requisite amount, as prescribed by the authorities, along with the PAN application. Making an application for allotment of the Permanent Account Number and incurring "COST" for that is "unfair and unjust" to the applicant. It is the proprietary/statutory function of the Income Tax Department to allot the same "Free of Cost", as the same has been the normal part of its function, empowered by the Income-tax Act, 1961.	
220.	<i>Practical difficulties faced by assesseees in migration of PAN</i>	When an assessee is moved from one place to another or his jurisdiction is transferred from one A.O. to another, his PAN is to be transferred to the new Assessing Officer. It is the responsibility of the Commissioner holding jurisdiction of the PAN to transfer it to the new charge, either on request of the assessee or the new A.O. For Individual assessee, the new A.O. (Where PAN to be transferred) can make an online request to send the PAN under his jurisdiction. If the current A.O.(where the PAN belongs now) has no objection and he does not take any online activity within 10 days, the PAN will automatically be migrated to the new Assessing Officer.	<i>It is suggested that the automated process of PAN Migration applicable to individual assesseees may also be provided to other assesseees as well so that they do not have to face hardships due to delay in PAN migration.</i>



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		However, the above mentioned automated process is available for individual PAN only, PANs of other categories are to be transferred only by the Commissioner holding previous jurisdiction. It has been noticed that migration of PAN is causing unnecessary hardship to the other assesseees.	
221.	Unique code for high valued property transactions	Currently, every Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 has to report through AIR/SFT, the data related to every purchase or sale by any person of immovable property valued at thirty lakh rupees or more as per section 285BA rwr 114E. There is a need for integrating the data related to such high valued transactions and to strengthen the reporting requirements.	<i>It is suggested that a unique code be allotted to all transactions reported through AIR/SFT w.r.t property transactions exceeding a certain amount so as to help in data mining exercise of the government. One such unique code can be as follows:</i> <i>(XX YY ZZZZZZZZZZ MMMMMM)</i> <i>STATE code, Registrar Code, PAN, Date of Transaction</i> <i>The first 2 digits should reflect the state code followed by 2 digit sub registrar code and next ten digits should be PAN of the asseseess and last 8 digits showing the date of registration in DDMMYYYY format.</i>
222.	Foreign contribution to be reported/populated in form 26AS	As per the Foreign Contribution (Regulation) Act, 2010 read with Foreign Contribution (Regulation) Rules 2011 as	<i>In view of the fact that the data related to foreign receipts are governed by the Foreign Contribution</i>



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		amended, any contribution received above the specified amount (INR 1 crore) needs to be reported by the recipient bank on behalf of assessee registered under the FCRA Act to the Central Government. Further, all the receipts along with the audited financial statements as at the end of the year is reported to the Ministry of Home affairs by the recipient (mostly NGOs) of such funds from foreign sources. As on date the same is not reported in form 26AS of such assessee. Since all the data w.r.t foreign receipts is already available with the designated bank as well as Ministry of Home Affairs, it would be really useful if the same is also covered under the scope of Statement of Financial Transaction under section 285BA. The foreign receipts of such assessee could be matched with the Income Tax Returns and any discrepancy may be scrutinized accordingly.	<i>(Regulation) Act, 2010 read with Foreign Contribution (Regulation) Rules 2011 as amended is already available with the designated banks and the Ministry of Home Affairs, it is suggested that the same may be incorporated in the Form No. 26AS and also in SFT under section 285BA. In case it is reflected in Form No.26AS, the assessee would be more cautious of his tax obligations.</i>
223.	<i>Applicability of SA - 700 on form of audit reports</i>	The ICAI had pursuant to the issuance of the Revised SA 700, "Forming an Opinion and Reporting on Financial Statements", prescribed a revised format of the auditor's report on financial statements. As per SA 700 an auditor shall modify the opinion in the audit report when: a) the auditor concludes that, based on the audit evidence	<i>The suggested draft format of a clean report has been submitted to the Under Secretary (TPL-III), CBDT vide its letter No. ICAI/DTC/2013-14/Rep-25 dated 7th February, 2014. The modifications in the report i.e. qualification, adverse opinion, disclaimer of opinion, may be reported by the auditor</i>



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		obtained, the financial statements as a whole are not free from material misstatements b) the auditor is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement Considering the materiality and the pervasiveness of the effects or possible effects on the financial statements, the auditor may issue a modified report with a: a) Qualified opinion b) Adverse Opinion c) Disclaimer of Opinion Also, SA 700 requires the auditor to clearly lay down management's responsibility and auditor's responsibility. This revised format has been made effective in respect of audits of financial statements for periods beginning on or after 1st April 2012. Considering the fact that SA700 is applicable to non-corporate entities also, ICAI had suggested certain changes vide its letter No. ICAI/DTC/2013-14/Rep-25 dated 7th February, 2014 to the Under Secretary (TPL-III) in Format of Form No. 3CB so as to enable our members to comply with guidelines issued by its Council.	accordingly. (SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)



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224.	Desirability to bring back block assessment system	Since block assessment has been discontinued, there is litigation as regards the year of taxability of certain income/assets discovered in search. If it is provided that an assessee can agree to subject the whole of sums/assets to be taxed in the year of search at a flat rate of 60% (tax which is equal levy of 100% penalty on today's maximum marginal rate). No further proceedings/assessments would become necessary. Taking into consideration the ground reality, such voluntary compliance at every stage should be encouraged. By closing the option of voluntary compliance in search cases at higher cost, the defaulting tax payers will be compelled to opt for litigation in respect of the income, which he would have otherwise readily agreed to offer for taxation. In this process he may or may not succeed but can definitely prolong the litigation.	<i>The continuance of earlier block assessment procedure is desirable and would help in:</i> <i>(a) reducing controversy over the year of taxability of income;</i> <i>(b) providing suitable incentive for a person to make the necessary disclosure without indulging in litigation and</i> <i>(c) removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.</i>

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225.	Valuation of Sweat Equity under Rule 3(9)	In respect of sweat equity/ ESOP the company law guidelines specify that the valuation is to be done by the statutory auditors/ merchant bankers. Further, Rule	<i>It is suggested that Rule 3(9) should also be amended to enable an accountant to do valuation of sweat equity. Thus, Rule 3(9) may be re-</i>



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		11UA(c)(c) also provides for the purposes of section 56, the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be a price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an ACCOUNTANT in respect of such valuation. However, Rule 3(9) of the Income-tax Rules, 1962 on perquisite valuation provides that for the purposes of section 17(2)(vi) the fair market value of a specified security, not being equity shares in a company, on the date on which option is exercised by the employee, shall be such value as determined by a MERCHANT BANKER on the specified date.	worded as follows:- <i>“for the purposes of section 17(2)(vi) the fair market value of a specified security, not being equity shares in a company, on the date on which option is exercised by the employee, shall be such value as determined by a merchant banker OR AN ACCOUNTANT on the specified date.”</i>
226.	Rule 26 - Telegraphic transfer buying rate	Rule 26 of the Income-tax Rules, 1962 which states that “For the purpose of deduction of tax at source on any income payable in foreign currency, the rate of exchange for the calculation of the value in rupees of such income payable to an assessee outside India shall be the telegraphic transfer buying rate of such currency as on the date on which the tax is	<i>The explanation to Rule 26 may be substituted by making a reference to the trading rate for that day as declared and available on the website of Reserve Bank of India.</i> <i>The change is revenue neutral but can ease practical difficulties.</i>



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		<i>required to be deducted at source under the provisions of Chapter XVIIIB by the person responsible for paying such income.</i> <i>Explanation: For the purposes of this rule, telegraphic transfer buying rate, in relation to a foreign currency, means [the rate or rates of exchange] adopted by the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), for buying such currency, [having regard to the guidelines specified from time to time by the Reserve Bank of India for buying such currency], where such currency is made available to that bank through a telegraphic transfer.]”</i> The telegraphic transfer buying rate, as mentioned above, are easily available on the RBI website and that if for any reason one has to refer to a prior period rate, old rates are also available from RBI Archives on their website, whereas it is very difficult to get past SBI buying rates.	
227.	Reconciliation of Foreign Currency Remittances	All the foreign currency remittances/payments are required to be reconciled with details provided in Form No.15CA. RBI report 2012-13 provides that the foreign currency remittances for	<i>Out of the said amount, even if 1/3rd remittance is liable for tax @ 1%, government should have received Rs. 1,00,000 Lakh crore by way of TDS on</i>



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		imports (all types of imports – goods and services) is more than 5,00,000 million dollars i.e. more than Rs. 3,00 Lakhs million Rupees	<i>foreign currency remittance. It is thus suggested that all the foreign currency remittances/payments are required to be reconciled with details provided in Form No.15CA.</i>
228.	Number of Returns and payment schedule should be curtailed	Even in the e-filing era, the assessee are overburdened with the compliances to be made with regard to filing of returns and payment schedules. An assessee is required to file quarterly returns relating to TDS on salaries, Quarterly returns relating to TDS on amounts other than salary, and quarterly returns relating to TCS. These are in addition to the Income tax return form which is to be filed on annual basis. Due to errors in the punched data or for some other reason, the assessee is required to file correction statements or revised return which is also a cumbersome process. Apart from this there is a payment schedule to be followed in respect of TDS/TCS, advance tax, Self assessment tax and so on. This is too cumbersome.	<i>For the convenience of the tax payers it is suggested that the number of returns and payment schedule to be filed by the assessee should be curtailed appropriately.</i> (SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)



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229.	Challan rectification mechanism	Considering the fact that several mistakes were being reported which occurred on account of wrong punching of data in the OLTAS by the banks, the CBDT introduced a new challan correction mechanism for paper based payments of income tax. The said system has been appreciated by the assesseees. Since, inadvertent mistakes can occur while paying the income tax online also, it is felt that challan correction system be made applicable to challans in respect of online payments of income tax also.	<i>It is suggested that challan Correction Mechanism be made applicable to all types of challans including challans for online payments etc.</i> (SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES` RELATING TO DIRECT TAXES)
230.	Audit of TDS returns	A major portion of the revenue by way of income-tax is recovered through deduction of tax at source. Thus, in-depth verification of all the TDS returns is necessary. Even though for furnishing the information required under clause 34 of Form No.3CD, an in-depth verification of the TDS returns is done, an independent audit provision only for audit of TDS returns would reduce the mismatch and other challenges being faced by the Department.	<i>It is suggested that an independent audit provision may be inserted to provide for a comprehensive audit of all the TDS returns filed with the Department. Appropriate forms of audit report can be prescribed to certify the correctness of the quarterly TDS returns. This will enable the Department to be rest assured about the correctness of the TDS returns filed as well as the remittance of the tax deducted at source to the credit of the Central Government.</i> (SUGGESTIONS FOR RATIONALIZATION OF



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			THE PROVISIONS OF DIRECT TAX LAWS)
231.	Monetary limits in the Income-tax Act, 1961	The monetary limits for all exemptions or deductions were provided long back. It has been long since the same have been revised considering the prevailing inflationary conditions in India. An effort has been made to compile all such monetary limits with the Cost inflation index (CII) of the year in which they were last revised and the CII of the year 2015-16 to arrive at the figure of tentative present limit. The same is given as an Annexure to this memorandum.	<i>Considering the Cost inflation Index (CII) of the year in which the various monetary limits under the Income-tax Act, 1961 were last revised and the CII of the year 2016-17, an effort has been made to make a comparative statement of the present limit and the figure of tentative limit, had the CII been applied to them, has been prepared. The same is given as an annexure to this memorandum. It is suggested that the present monetary limits be revised upwards appropriately.</i>
232.	Clarity / guidelines in attribution of profits to PE of a non-resident in India	No clear rules laid down on profit attribution to a PE of a non-resident on income accruing or arising through or from business connection in India. The existing Rule 10 is not specifically worded and could potentially lead to unnecessary litigation.	<i>It is suggested that amendments may be made to the Act/ Rules to provide for a clear methodology for computation of profit attributable to a PE, after taking into account international best practices and the rules prescribed as per OECD PE Attribution Guidelines.</i>
233.	Furnishing Bank Guarantee for amount specified	Every year, the Union Budget provides for the estimated tax collection during the relevant	<i>Ideally, the assessee may be required to furnish bank guarantee for the</i>



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	<i>in the notice of demand</i>	financial year. The said tax collection targets percolate to each and every Assessing Officer in the country by the CBDT. The stiff collection targets puts tremendous pressure on the Assessing Officers and thereby affect the quality of assessments they do. It also forces the Assessing Officers to make several high pitched assessments leading to unjust demands. This is evidenced by reversal of such assessments during the appellate proceedings. Every year, several demand notices are issued under section 156 along with assessment orders. Most assessees, being aggrieved by the unjust demands raised in those orders, take up the issue before the appellate authorities. At the same time, they also file an application for stay of demand before the concerned Assessing Officer. In reality, Assessing Officers entertain such stay applications with minor modifications like payment of certain portion of demand say 20%/30%. It is noteworthy to mention that powers under section 220(6) are discretionary in nature. In recent times, in order to meet the stiff collection targets, quite a few Assessing Officers have initiated recovery proceeding	<i>amount specified in the notice of demand which will protect the interest of the revenue, without affecting the assessee's liquidity. Such an enabling measure would also be in line with the current government's move to facilitate 'ease of doing business'.</i> <i>Further, the appeals in high demand cases and high pitched assessments should be taken up on priority basis.</i>



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		and attached bank accounts/got the payment from assessee's bank by exercising the powers under section 226 or exercising powers under section 222 read with Schedule II in case of expiry of stay application. In such a case, the assessee has no option but to file a stay application to the concerned authority where his case is pending. The above process of initiating recovery proceedings and recovering the amount due from the assessee when his case is still pending before the concerned appellate authority and has not attained finality, puts a lot of financial strain on assessee's resources and affects his business operations. Even stay applications are approved for specific time period (maximum 1 year by ITAT under proviso to section 254 subject to satisfaction of conditions specified therein). Liquidity issues crop up due to payment of demand and as a result assessee's working capital is locked up. In a country like ours, where appeals go on for several years before reaching to their logical end, the assessee ends up facing undue hardship on account of	



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		their working capital remaining locked up for such a long time.	
234.	<i>Suitable tax incentive to industries using flyash as their major raw material</i>	Flyash is one of the major residues generated during the combustion of coal in thermal power plants. Air pollution is caused by direct emissions of wind-blown ash dust from the power plants. Flyash so generated from thermal power plants contain many toxins and thus poses major environmental problems. Though it is a waste product for the power sector, it is used as a raw material, in many industries primarily, in brick manufacturing.	<i>It is suggested that suitable tax incentive may be given to industries using flyash as raw material.</i>
235.	<i>Incentives to Sugar and Power industries</i>	Sugar industries and carbon/power industries generate a lot of electricity in house using their resources. However, due to the old electricity law/Act, such industries are unable to sell the excess power generated. As a result, a precious resource generated like electricity generally goes waste. Same happens with wind and solar power generated.	<i>It is suggested that suitable incentives under the Income-tax Act, 1961 may be provided to such assesseees like sugar and carbon/power industries which generate power required to run the industry in-house. Since such industries ease the difficulty on account shortage of power by consuming power generated in-house.</i>
236.	<i>Sustainability Initiatives Towards Maintaining the Growth of 8% + GDP</i>	The Indian economy has shown considerable underlying strengths. India's reliance on external debt could pose pressure on the economy. The best route to fund the economy	<i>To achieve a GDP of 8% + per annum, India can promote saving levels at 36% + of income by giving suitable incentives to assesseees.</i>



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		is with no doubts by generating funds within the economy. On the fiscal side, the government needs to target a utilisation of domestic savings for more productive asset creation.	
237.	Leave Travel Concession/Assistance -Replacement of "Calendar year" by "Financial year":	As per the provisions of section 10(5) of the Income-tax Act, 1961, an exemption of the value of leave Travel Concession/Assistance received by the employee from his employer is provided subject to fulfillment of prescribed conditions. Rule 2B provides for the specified conditions to be fulfilled. One of the conditions is that the exemption can be availed only in respect of two journeys performed in a block of four CALENDER YEARS. The concept of "Calendar year" was introduced in the year prior to 1989 when there was no uniform Previous Year. Since 1989 uniform Previous Year has been introduced i.e. April – March. To be in line with the concept of "financial year" adopted by other provisions of the Income- tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March) i.e. the calculation of block period shall	<i>To be in line with the concept of "financial year" adopted by other provisions of the Income tax Act, it is suggested that the concept of calendar year should be replaced with financial year (April – March)</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>



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		be shifted from Calendar year to Financial Year.	
238.	Section 14A – Instruction for proper application	Even in cases where there is no claim of expense in relation to exempt income, it is generally seen that Assessing officers are making disallowances by invoking Rule 8D.	<i>It is suggested that an instruction may be issued so that no disallowance may be made under section 14A in such cases.</i>
239.	Taxation of ESOPs	The current Income Tax Law, provides for the inclusion of ESOPs under section 17(2) to be taxed as a “perquisite”, consequent to the abolition of FBT. The section states that ESOPs issued free of cost or at concessional rates will be taxed on the date of exercise on the difference between the “fair market value” and the amount actually paid by the employee. The “fair market value” is to be determined based on stipulated methods which will be separately prescribed by the CBDT. This suffers from the following drawbacks: a) It seeks to tax a notional benefit at a time when the actual gain is not realized by the employee. In fact, it is possible that the actual sale of shares could result in a loss for the	<i>It is suggested that the tax on ESOPs should be only at the point of sale of the shares by the employees and not at the time of exercise of shares to encourage the companies to grant ESOPs in consideration of the talent pool and the contribution made by the employees.</i>



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		employee. Since the perquisite tax paid earlier cannot be set off against the capital loss, the employee suffers a double loss, namely tax outgo and loss on sale of shares. b) The question whether the ESOPs are granted at a concessional rate is being determined with reference to the “fair market value” on the date of exercise of the options. Technically, this is an incorrect approach. If the ESOPs are issued at the prevailing market price on the date of grant, the issue should be treated as “non concessional”. This would be in line with the guidelines issued by SEBI. Any subsequent gain accruing to the employee due to favorable market movements by the date of vesting or exercise of option cannot be treated as a “perquisite” granted by the employer. c) Further, if such subsequent gains are a perquisite in the hands of employers, it would stand to reason that the value equivalent of such a perquisite should have been	



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		a deductible expenditure in the hands of the company issuing the ESOP. Since the tax law does not contemplate such a deduction, the taxation of the perquisite would result in double taxation. d) Also, from the strictly legal angle, there are a number of differences between ordinary shares and ESOP shares. Therefore, they are not comparable. The taxation principles currently existing result in discrimination. The market value is also strictly not applicable since there are lock-in periods applicable. Since the actual sale of shares will attract capital gains tax, if applicable, it is unnecessary to subject the employee to perquisite tax. In fact, before FBT was imposed on ESOPs, specific provisions existed in the Income Tax Act for exempting the same from perquisites and subjecting it only to capital gains tax.	
240.	<i>Taxation of specified security or sweat equity shares allotted to employees under Employee Stock Option Plans</i>	Taxation of ESOPs creates an issue in the case of migrating employees, who move from one country to another, while performing services for the company during the period between the grant date and the	• <i>During the erstwhile Fringe Benefits Tax regime, there was a specific clarification on the taxability, where the employee (who qualified as a</i>



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	<i>(ESOPs) in case of migrating employees</i>	allotment date of the ESOP. The domestic tax law is unsettled on the taxation of such migrating employees and does not clearly provide for such cases.	<i>non-resident/ not ordinary resident) was based in India only for a part of the period between grant and vesting. However, there is no specific provision in this regard under the amended ESOP taxation regime from 1 April 2009.</i> <i>The Government may look at providing clarity on the taxability of ESOP's for such mobile employees.</i>
241.	Depreciation on books used by professionals	Books are very important tools used by professionals to carry on their profession. Though expenditure on purchase of books is no doubt capital in nature, the books purchased by professionals' have a very short shelf life of around a year or sometimes even less, due to the fast pace of developments in their respective fields, be it medicine or engineering or law or accountancy. Depreciation was always allowed on books at 100 per cent till 1st April, 2003, from which date, by the amendment to Appendix I to the Income-tax Rules, 1962, the rate of depreciation has been reduced to 60 per cent for books not being annual	<i>In view of the above, it is suggested that the depreciation on books purchased by professionals be restored to its original rate of 100 per cent</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



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		publications. This has created numerous difficulties and hardship for professionals who need to capitalize each and every book purchased by them though its value may not be very significant. It has resulted in additional book-keeping for these professionals. Also, the revenue does not gain from such an amendment as the expenditure on books by professionals would not be material.	
242.	Rule 6F - Upward revision of limit of Rs.1,50,000	Rule 6F of the Income-tax Rules, 1962 provides for books of accounts and other documents to be kept and maintained by persons carrying on certain professions. The proviso to Rule 6F(1) provides that this rule will not apply in relation to any previous year if the total gross receipts from the profession do not exceed Rs.1,50,000 in any one of the three years immediately preceding the previous year. This limit of Rs.1,50,000 was enhanced long back in the year 2000 considering the inflationary trends at that point of time. Considering the prevailing inflationary conditions in India, this limit needs an appropriate upward revision say Rs.5,00,000. Rule 6F may be accordingly amended.	<i>Considering the prevailing inflationary conditions in India, the limit of Rs. 1,50,000 provided in the proviso to Rule 6F(1) needs an appropriate upward revision, say Rs. 5,00,000. Rule 6F may be accordingly amended.</i> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF THE INCOME TAX ACT, 1961)</i>



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243.	Rule 6F(2)(iv) – requires to be dispensed with	Rule 6F(2) provides the books and other documents to be maintained by the professionals. Sub-clause (iv) of Rule 6F(2) requires maintenance of carbon copies of bills exceeding Rs 25.	Clause (iv) to Rule 6F(2) clause was inserted in the year 1983. Since then, there has been phenomenal change in the working of the businesses. Nowadays, the billing is computerized and the value of transactions being entered into has increased manifold times. Thus, this clause should be dispensed with. In case the same is continued, the value of minimum bill amount of Rs. 25 should be increased to Rs.1000.
244.	Exemption under section 54 & 54F	Under Section 54 of the Income-tax Act, if an assessee who has earned a Capital Gain on sale of a residential house, has, within the prescribed period, purchased or constructed another residential house, then, to the extent of the cost of the new residential house, no tax in respect of such Capital Gain is payable. There is a similar provision under Section 54F under which the Capital Gains arising on transfer of ANY long term capital asset will also be exempt from tax, if the assessee has,	In order to avoid unnecessary litigation, a Circular on the said subject be issued clarifying that in a case where an assessee has entered into a Registered Agreement for Purchase of a residential flat in an “OAS” and the assessee has paid more than 50% of the cost of the residential flat within the period prescribed in Sections 54 and 54F and has, within a further period of three years obtained actual



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		within the prescribed period, purchased or constructed a residential house, to the extent of the cost of such new residential house. A considerable volume of litigation has arisen in the past on the issue as to 'when' exactly an assessee can be considered to have purchased or constructed a new residential house and also on the issue as to whether the acquisition of the new residential flat in an Ownership Apartments Scheme (OAS) or a Co-operative Housing Society is "purchase" or "construction". This distinction is important because, the prescribed time limits for both are different. The above controversy has been set at rest by the CBDT in relation to the acquisition of a flat by an allottee under the self-financing scheme (SFS) of the Delhi Development Authority (DDA) by issuing the Circular No. 471 of 15.10.1986. The Circular has clarified that in case of allotment of a flat by the DDA under the SFS, the allotment by DDA will be treated as "construction" of a residential house and that the "construction" shall be deemed to have been made on the date of allotment of the flat on payment of the first installment of the price of the flat even	<i>possession of the residential flat on payment of its full price, the assessee shall be deemed to have "constructed" a 'residential house' within the meaning of Sections 54 and 54F on the date on which the Agreement for Purchase has been registered and the exemption under the said Sections will be available to the assessee to the extent of the aggregate cost of the residential flat agreed to be purchased.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>



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



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		residential flat on payment of full purchase price of the flat within a further period of three years after the expiry of the prescribed period, the exemption shall be withdrawn. The exemption will be to the extent of the total cost of the residential flat as per the Agreement for Purchase. The presumption is that the RED constructs the Ownership Apartment on behalf of the flat owners. The preponderant view taken by many Tribunals and Courts in several decided cases supports the submission made in the precedent para. See “ShashiVerma V. CIT 224 ITR 106(MP), CIT V. R.L. Sood 245 ITR 727 (DEL), HillaWadia . CIT 216 ITR 376 (BOM). However, some Tribunals and Courts have taken a different view. As there have been conflicting Judgements on the issue, many Assessing Officers (AO) take the view that the exemption is available only if the actual possession of the new residential house has been taken after payment of the entire cost of the residential house within the prescribed period. Some have also taken a view that when an assessee joins an “OAS” he is “purchasing” a flat and not constructing a flat. Such a view	



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		causes considerable unjustified hardship to the assessee and has resulted in a lot of avoidable litigation. The aforesaid view taken by some Assessing Officers strikes at the very root of the intention of the Parliament in enacting the Sections 54 and 54F for giving the much needed relief to assessee who need to change a residential house for various genuine and valid reasons, and they have no option but to join on "OAS". It is evident that they do not earn a real capital gain on sale of the first residential house when they have to necessarily utilize that capital gain for acquiring the new residential flat. The real estate prices have been continuously on the increase. Therefore, the new residential flat will usually cost more than the sale price of the one sold. When a person books a flat in a large OAS, he cannot be sure that the scheme will be completed within the period prescribed in Sections 54 and 54F. In most case, large OAS take a longer period for completion than the one prescribed for 'construction' in Sections 54 and 54F. It has been an 'oft declared' policy of the Government to take all steps necessary to	



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		reduce litigation because of the very large number of pending cases with the Supreme Court and the High Courts. On this issue, there has been considerable avoidable litigation because of differing interpretations taken by AOs, Tribunals and Courts on the question whether acquisition of a residential flat in an OAS is 'purchase' or 'construction' and when the 'purchase' or 'construction' can said to have taken place.	
245.	Deputation of employees - [Taxability as fees for technical services/ Permanent Establishment issues]	An issue is under debate as to whether payments made by the Indian company to foreign company towards reimbursement of the salary costs of persons deputed to India would be treated as fees for technical services. Further, such deputations are often tested for a risk of creation of a PE for the foreign enterprise in India. Employees deputed to the Indian company work under the control and supervision of the Indian company and are essentially employees of Indian company. Any payments made by the Indian company towards the amounts cross-charged by the Foreign Company would be in the nature of re-imbursement of the salary costs and ought not to be taxable.	<i>It is suggested that a specific clarification may be provided by the Government to the effect that as long as the employee works exclusively for the Indian company during the period of deputation and operationally works under the 'control and supervision' of the Indian company, payments made by the Indian company to the foreign company would not qualify as FTS. Further, it should be clarified that such an arrangement would not trigger a creation of PE for the foreign enterprise in India.</i>



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246.	Due date of furnishing statement in Form No. 64 under section 115U read with Rule 12C	Section 115U(2) read with Rule 12C requires that the person responsible for crediting or making payment of the income on behalf of a Venture Capital Company (VCC) or a Venture Capital Fund (VCF) and the VCC/VCF shall furnish a statement in Form No. 64 to the person liable to tax in respect of such income by 30th November of the financial year following the previous year during which such income is distributed. Difficulty is faced by assees who have to file their return of income by 31st July of the assessment year. Since income received by the investor is taxable in his hands, he has to declare his income in his return of income. However, the certificate is received by them by 30th November, which causes genuine difficulty to him.	<i>To enable the investor of VCC/VCF being an individual, to declare his income from VCC/VCF in his return of income by 31st July, the due date of furnishing statement under Rule 12C should be changed to “30th June” from “30th November”.</i>
247.	Guidelines for the empanelment of auditors under section 142(2A)	For the purpose of conducting special audit under section 142(2A) of Income-tax Act, 1961, the auditor is nominated by Chief Commissioner or Commissioner. Presently, no specific guidelines have been issued by the authorities to enable the Chief Commissioners or Commissioners to take an informed decision. Considering	<i>Specific guidelines for the appointment of auditor under section 142(2A) by Chief Commissioner or Commissioner may be issued.</i> <i>The said guidelines may provide for conditions like experience of the auditor in the relevant field, number of years of experience, number of</i>



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		the fact, that the tasks involves auditing of complex accounts, some specific guidelines taking into account the experience of the auditor in the relevant field etc may be issued by CBDT. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits in a particular year may be imposed.	<i>partners etc. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits by a particular auditor in a particular year may be imposed.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
248.	Section 154 - Mistake apparent from record	Even after due efforts taken by the Government to ensure compliance relating to filing of TDS returns by the deductors, the defaults on behalf of deductors continue for one or the other reason. This deprives the deductee from claiming the Tax so deducted in his return of income filed before due date of filing return. However, situations do arise where the returns are belatedly filed or a correction statement has been filed at a later date by the deductor resulting into a credit in Form No. 26AS of the deductee at a later date say after the time limit of filing a revised return has also expired. Considering the fact that such an omission in the return of income, duly supported by the entries of Form No. 26AS, is a mistake apparent from record, it is suggested that the Assessing Officers may be intimated to	<i>The Assessing Officers may be given appropriate instructions to accept rectification applications under section 154 in cases where Form No. 26AS reflects the entries relating to TDS but the same has not been claimed in the return of income.</i> (SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)



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		accept the rectification application under section 154 in such cases. This will surely be helpful in removing the administrative hindrances being faced by the assesseees as well as the Government.	
249.	Section 200 - Furnishing of TDS returns	Section 200 provides for the payment of TDS and filing of TDS Returns. The Income Tax Law requires payment of TDS every month by 7th of the following month and by 30th April of the Assessment year for tax deducted in the month of March of the Previous year. The said payment is to be made under various codes as per the sections under which the tax is deducted. Currently, the payment under each code is to be made under a separate challan which requires filling up the same PAN, TAN, name, address etc details over and over again. This is clubbed with the internet connection problems and it becomes a very cumbersome job especially for the small and medium assesseees. Practically, for payment of tax so deducted details of parties with PAN and section under which it is to be deducted is maintained. However, except the section under which tax is required to be deducted, no	<i>Since the details are already available with the deductor at the time of payment of taxes, the e-challan itself can be so designed that it captures all the details at that time. The details so submitted at that time may respectively be reflected in the Form 26AS of all deductees.</i> (SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)



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		other detail is required to be mentioned in the challan. The statement containing all such details is to be submitted for every quarter. This leads to duplication of work and also a cumbersome task of furnishing so many statements and challans.	
250.	Auto fill of TDS data in Income Tax Returns(ITR)	Currently an assessee filing his income tax return needs to fill all the data manually wrt the taxes paid by him/on his behalf (TDS) in excel utility . Since TDS returns are e-filed now days, an assessee by manually punching the data relating to prepaid taxes like TDS is prone to committing errors. Also, there is an unnecessary effort in punching the data manually which can be automated as the data can be picked from TDS returns filed by deductors based on unique field ie PAN of the deductee assessee. This will lead to efficient use of technology and lesser errors in ITRs relating to data of prepaid taxes like TDS.	<i>Necessary changes may be made to the e-filed ITR forms using excel utility so that data relating to TDS deposited on behalf of assessee deductee is automatically picked from TDS statements filed by deductors based on unique field like PAN.</i>
251.	Reconciliation of each payment made by deductor to avoid duplication of work of TDS return	In order to make the process of claim of TDS error free, a system was devised some years ago in 2009 and published vide circular no 2/2009, dated 21.05.2009. The relevant excerpt from the said circular is as follows:	<i>The mentioned circular is suggested to be implemented with appropriate modifications in light of the current technological advancements.</i>



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		“12. With a view to enabling the implementation of the aforesaid decision, the TDS and TCS payment and information reporting system has been redesigned vide Notification No. 858(E), dated 25th March, 2009 published in Official Gazette. The salient features of the new TDS and TCS payment and information reporting system are the following :— (i) The new system has been harmonized for all deductors (including Central and State Governments). Therefore, like non-governmental tax deductors, every deductor in the Central and State Government have also been made responsible for making direct payment of TDS in the bank. They are no longer allowed to make payments of the TDS and TCS by making book adjustments or consolidated payments. As a result, the TDS payment and information reporting system will be uniform across deductors. (ii) Rule 30 and Rule 37CA of the Income-tax Rules, 1962 have been substituted to provide, inter alia, for the following :— (a) All sums of tax deducted at source under	



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		<i>Chapter XVII-B and of tax collected at source under Chapter XVII-BB shall, in general, be paid to the credit of the Central Government within one week from the end of the month in which the deduction, or collection, is made. Similarly, the same time-limit for payment will also apply for income-tax due under sub-section (1A) of section 192.</i> <i>(b) It is mandatory for all deductors (including Central Government and State Governments) to pay the amount by electronically remitting it into the RBI, SBI or any authorized bank.</i> <i>(c) It is mandatory for all deductors (including Central Government and State Governments) to make the payment by electronically furnishing an income-tax challan in Form No. 17.</i> <i>(iii) In the process of electronically furnishing the income-tax challan in Form No. 17, the deductor will be simultaneously required to furnish to the Taxpayer Information Network (TIN) system maintained by National Securities Depository Limited (NSDL) either through screen based upload or file upload, three basic information relating to the deduction i.e., PAN,</i>	



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		name of the deductee and amount of TDS/TCS. (iv) Upon successful remittance of the TDS/TCS to Central Government account and the uploading of the basic information as mentioned above to the TIN system, every deduction record will be assigned a Unique Transaction Number (UTN). (v) NSDL will create a facility to e-mail the UTN file to the deductor if the e-mail address of the deductor is available with them. In addition, they will also create a facility for the deductor to download the UTN file. (vi) The UTN will be required to be quoted by the deductor on the TDS/TCS certificate issued by him to the deductee. (vii) NSDL will also create a facility to allow independent viewing of the UTNs by the deductee. (viii) With a view to enabling the Income-tax Department to monitor compliance by the deductor with the TDS provisions, every person (including Central Government and State Government) who has obtained a Tax Deduction or Collection Account Number (TAN) shall electronically furnish a quarterly statement of	



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		compliance with TDS provisions in Form No. 24C. It is mandatory for all TAN holders to furnish this form irrespective of whether any payment liable to TDS has been made or not. This form shall be furnished on or before the 15th July, the 15th October, the 15th January in respect of the first three quarters of the financial year, respectively, and on or before the 15th June following the last quarter of the financial year. This e-form No. 24C has to be furnished at http://incometaxindiaefiling.gov.in. The first quarter in respect of which Form 24C is required to be furnished is the quarter ending on 30th June, 2009. (ix) In order to enable the deductor to furnish the UTN to the deductee, the existing Form 16 and Form 16A have been appropriately modified. (x) The quarterly returns of TDS and TCS hitherto required to be filed in Form No. 24Q, Form No. 26Q, Form No. 27Q and Form No. 27EQ shall now be required to be filed for all quarters on or before the 15th June following the financial year. Effectively, the quarterly returns have now been replaced by an annual return.” As is clear from the above reproduced para from the said	



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		circular, the proposed method will automatically verify each payment of TDS made by deductor and will reduce the duplicacy done while filing quarterly TDS statements. The above method will effectively lead to an annual TDS return instead of quarterly TDS statements currently	
252.	Master Circular on TDS-Need of the hour	In order to support/clarify the provisions of Chapter XVII, various circulars have been issued from time to time. Further various court decisions, favourable or unfavourable for the assesseees, have also clarified various provisions of Tax deduction at source or tax collection at source. These court decisions/circulars/notifications have been more or less accepted by both the Department and the assesseees. However, the difficulty arises for the assesseees since all circulars, which may have been issued way back in 1995, 1996 etc. (still applicable) are not available at one place. Even though ignorance of law is not an excuse, it is quite possible that due to non-availability of the clarifications issued so far at one place, some assesseees inadvertently might not have deducted tax on particular	<i>To improve compliance of TDS/TCS provisions it is suggested that a master circular exclusively on TDS be issued, within a period of 15 days of passing of Finance Act every year.</i>



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		transactions entered into by them. Since approximately 40% of total revenue is collected through TDS /TCS, it is essential to issue a master circular every year on the lines of circular on TDS on Salaries. Issuing a master circular, clearly laying down the well established Court decisions and circulars issued so far, would on one hand improve compliance of TDS/TCS provisions and on the other hand act as easy reference for the assessees.	
253.	Interest under section 234C for newly formed Firms and Companies	As per the provisions of section 207 and section 211, the assessee is liable to pay the advance tax on the 'Current Income' of the assessee. This presupposes the existence of the assessee. In view of this, interest under section 234C cannot be charged for the instalments of advance tax due before the date of coming into existence of a Firm or a Company. In spite of this, the Departmental Software processing the ITR does not take care of such a situation and interest under section 234C is being charged in a routine manner.	<i>It is suggested that the Departmental Software needs to be suitably amended so that firm and companies are not required to pay interest on the short payment of instalment of advance tax under section 234C for the period when they were not in existence.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
254.	Section 285BA read with Rule 114E – Payment exceeding the specified amount	Currently, every bank/any other company or institution issuing credit card is required to report through Form No 61A, data related to all persons making	<i>It is suggested that the information provided through Form No 61A w.r.t credit card payments exceeding the specified</i>



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	<i>in respect of credit card(s)</i>	payment exceeding the specified amount in respect of one or more credit cards issued to that person. Specifically, Rule 114E(2), <i>inter alia</i>, provides that payments made by any person of an amount aggregating to— (i) one lakh rupees or more in cash; or (ii) ten lakh rupees or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year needs to be reported. A Large number of banks/other institutions operating in India issue credit cards. Reporting all such transactions through Form No 61A becomes a time consuming task for such banks/institutions who also have to comply with other requirements like TDS returns etc. Banks have to put in lot of efforts to provide such type of data as the data needs to be compiled first as it is not readily available. Credit card transactions are done through payment gateway services provided by certain vendors. As of now, there are 4 payment gateway service providers as follows: 1. Visa	<i>amount as per Rule 114E(2) currently provided by banks be provided by Payment Gateway service providers (i.e. visa, master card, RuPay, American express) by making a suitable amendment in the Act/Rule.</i>



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		2. Mastercard 3. RuPay 4. American Express (AmEx) Since all the transactions through credit card are recorded/processed by the above mentioned vendors, it would be easier for them to provide the required information more accurately and in a timely manner. It would also help the department to scrutinize such information using the latest information technology tools. In case the information is called from payment gateways rather than banks, it will reduce the workload on banks and they can concentrate on their core services related to banking. Further, if some lesser number of entities can report such requisite data, it would be easy for both the AIR information provider as well as the government to control and utilize the data/information.	
255.	Mechanical disallowance of expenditure u/s 14A r.w. Rule 8D	The mechanical disallowance u/s 14A r.w. Rule 8D is also being added to the book profit by the AO irrespective of the fact whether assessee has actually debited any such expenditure in its P&L Account which is against the pronouncements given by various Judicial authorities in the recent past.	<i>The mechanical disallowance of expenditure u/s 14A r.w. Rule 8D alleged to have been debited by the assessee in its P&L account may be done away with while calculating its book-profit taxable u/s 115JB of the Act.</i>



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256.	Double taxation in case of buy back of shares by the company in case of ESOP's- Section 17	At the time of buy back of shares (not being shares listed on a recognised stock exchange), by a company from the shareholder, the company is liable to pay income tax on distributed income under Section 115QA of the Act. "Distributed income" has been defined as the consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares. Under ESOP's, the employee has already paid tax on the perquisite value at the time of exercise of shares (i.e. tax on FMV) as on date of exercise less the issue price or amount actually paid by the employee. Hence there is a double taxation on the difference between the FMV on the date of exercise and the issue price of the shares. Section 49(2AA) of the Act specifies that where the capital gain arises from the transfer of specified security or sweat equity shares referred to in sub-clause (vi) of clause (2) of section 17, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause. Similar provision is missing in section 115QA of the Act.	<i>It is recommended that for shares issued under ESOP/ equity incentive scheme, the calculation of distributed income should be regarded as difference between the consideration paid by the company on buy-back of shares and FMV as on the date of exercise for such shares. Accordingly, the tax may be calculated on the difference between the buy-back price and FMV on the date of exercise.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
257.	Quantum of R&D expenditure entitled to weighted deduction under Section 35(2AB) of the Act by DSIR	A plain reading of Section 35(2AB) of the Act may suggest that the weighted deduction is not with respect to 'expenditure' on scientific research on in-house R&D facility as approved by the prescribed authority. Earlier, Rule 6 and Forms 3CK, 3CL and 3CM do not anywhere state that the approval granted by DSIR is with respect to the expenditure. Recently, Rule 6 has been amended vide Notification dated 28 April 2016, where it has been stated that DSIR shall furnish electronically its report quantifying the expenditure incurred on in-house R&D facility by the company during the previous year and eligible for weighted deduction under Section 35(2AB) in Part B of Form No. 3CL. Further DSIR has issued its own set of guidelines which specifically states that certain expenditure are not permissible for claiming weighted deduction under Section 35(2AB) of the Act viz. clinical trials conducted outside the approved facilities, lease rent, building maintenance and municipal taxes of the R&D facility, foreign patent filing expenditure and consultancy expenditure, interest on loan for R&D facility, etc	<i>It is suggested that DSIR guidelines should not deal with the allowability or disallowability of any expenditure incurred on in-house R&D facility. There are sufficient provisions within the Act which provides powers to the Assessing Officer (AO) to examine the same. Further in case of doubt about the usage of asset or activity constituting scientific research, the AO can always refer the question to the Central Board of Direct Taxes (CBDT) under Section 35(3) of the Act, which in turn will refer the question to DSIR. Based on these feedback the AO may decide the quantum of R&D expenditure entitled to weighted deduction under Section 35(2AB) of the Act.</i> <i>In other words, DSIR should not decide the quantum of R&D expenditure entitled to weighted deduction under Section 35(2AB) of the Act. The AO may decide the quantum of R&D expenditure entitled to weighted deduction under Section 35(2AB) of the Act. Accordingly, the provisions of Section 35(2AB), Rule 6 (including</i>



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			<i>relevant forms) and DSIR guidelines may be amended</i>
258.	Incentivise transactions through credit/debit cards and other banking instruments	Large majority of the Indian consumer market is un-organised due to the presence of small businesses across sectors which largely deal in cash, both, when buying products and selling them. Secondly, the operations of these small establishments spread across the country pose a challenge for the tax authorities to monitor and track the volume of trade of this sector	<i>With an objective to bring the transactions of the unorganized sector into the tracking system of the government and with the easy availability of on-line mode of consummating the transactions, it is suggested that the government should introduce some incentives linked with payments made through the credit card / debit card and other banking instruments. These incentives could take the form of an additional deduction while computing the income of such persons/entities, which are directly related to the said mode of payments. With robust mechanisms in place, this will help the government track the trail of the transactions and facilitate bringing into the tax net the potential taxpayers if any that earn taxable income beyond the maximum exemption limit who were otherwise outside the tax net.</i>
259.	Recognize digital payments/evidences	Rule 3(7)(iii) exempts prepaid meal vouchers upto Rs. 50 per meal provided to employees. But there is no clarification	<i>Recognize electronic forms of meal vouchers for tax purposes</i>



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		whether such meal vouchers need to be necessary in physical form or whether electronic form of vouchers like prepaid meal cards or digital vouchers also qualify for the same benefit. During FBT regime, there were special rules prescribed (Rule 40E) for exempting fringe benefit provided by way of electronic prepaid meal card. Hence, there is ambiguity on validity of such electronic form of vouchers in absence of similar dispensation under current rules. Electronic forms of payments are convenient to use and have transparent audit trail. Besides, they are regulated by RBI under Payments and Settlement Systems Act, 2007 and hence there should be no concern on acceptance of such modes for tax purposes. It was expected that under powers taken by CBDT u/s. 192 r.w. 295 to prescribe mode and manner of maintaining evidences supporting exemption for different allowances and perquisites, CBDT will permit maintaining evidences in electronic form as alternative to paper form in vogue. However, Rule 26C notified on 29 April 2016 does not specifically permit maintaining evidences in electronic form. Maintaining	<i>Permit maintenance of evidences of exempt allowances/perquisites in electronic form</i> <i>Further, the aforesaid limit of INR 50 per meal/ tea/ snack (set atleast eight years ago) is inadequate, keeping in view the increased cost of food etc, hence needs to be revised</i>



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		evidences in electronic form reduces paper work and compliance burden for both employees and employer and facilitates 'ease of doing business'	
260.	Clarity on MAT	The computation of book profit under section 115JB is a complicated and vexed issue with diverse interpretations possible on various issues. These issues need to be clarified to reduce litigation before the appellate authorities, which is one of the aims of the Government. The issues in question are as under: i. Meaning of the terms "loss brought forward or unabsorbed depreciation" and "as per books of accounts – i.e. whether the intention is to prepare a separate computation for the purposes of computing brought forward losses, as explained in Circular 495 (dated 22 September 1987) which was in the context of section 115J of the Act. ii. The point of time at which loss or unabsorbed depreciation should be considered – whether at the end of the previous year or at the end of the relevant previous year in which the loss or unabsorbed depreciation	<i>Most of the above questions are directly or indirectly answered by Circular 495. It should be clarified that the said Circular should be applicable to section 115JB as well.</i> <i>For issues which are not covered by the said Circular, clarifications should be made to explain the legislative intent.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		arose? iii. Is book loss of a year to be set-off against profits of earlier years? iv. If book loss of a year is set-off against reserves, will it be available for set-off? v. Is the book loss of an amalgamating entity eligible for set-off by the amalgamated entity? vi. Whether the brought forward loss and unabsorbed depreciation is to be aggregated separately first and then these aggregates are to be compared to determine which one is lower?	
261.	Rule 4 of Part C of Fourth Schedule	The employer company contributing towards gratuity for the employees is required to make such contribution to the irrevocable trust. The said trust required to obtain approval under Part C of Fourth Schedule of Income-tax Act, 1961. The conditions for approval are prescribed under Rule 4 of Part C of Fourth Schedule of Income-tax Act. According to section 36(1)(v) read with section 40A(7) of Income-tax Act, 1961, any sum paid by the employer by way of contribution towards gratuity fund is allowable as expenditure if the gratuity fund is approved by the tax authorities. In	<i>The time limit shall be set for disposals of application for approval of gratuity trust. Further, there shall be provision for deemed approval if the application for approval is not disposed of by tax authorities within specified time limit. Further, process be set to submit applications online not only for gratuity trust but even for all other approvals for which applications are required to be made like Section 12AA, Part A & B of Fourth schedule of Income-tax</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		practice, the employer files an application with tax authorities to obtain approval for the gratuity trust. However, there are cases where such applications are pending with tax authorities for even 10 years. The applications are neither approved nor rejected. Further, no objections are raised during the period of pendency. The same tax authority raises the question on allowability of contribution to such fund when the approval is pending. The employer carries unwarranted risk of disallowance though the required contributions are made towards the irrevocable gratuity fund. According to Rule 8 of Part C of Fourth Schedule of Income-tax Act, in case the application for approval is rejected then the employer may appeal within sixty days to the Central Board of Direct Taxes (CBDT).	Act, 1961 etc.
262.	Section 40A(3) – Cross Cheques	Any payment for purchase and expenditure otherwise than account payee cheques is disallowed by 30%. Tax auditor has to report in Clause 21(A) that all payments have to be made through account payee cheques or not.	<i>I. Due to large volume of this transaction in money market, records of crossed/bearer cheques deposited in other accounts should be kept by nationalized bank, private bank, co operative bank, NBFC and shroff</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		In absence of physical cheques with assessee, most of CA writes opinion that they are not in position to comment and verify the documents in absence of cheques with assessee. In textile market, cloth market and another unstructured market, purchase payment has been rotated through different parties through crossed/bearer cheques. Here, bankers have to accept crossed/bearer cheques to be deposited by any party (May not be in name of party in whom name crossed/bearer cheques returned) Lots of unregistered shroff are discounting crossed cheques of any party and issue cheques in favour of other party by charging commission.	who has obtained license. <i>If keeping of record above Rs.20000/- is too burdensome then such limit may be revised to Rs. 500000/-. All those details may be filled by each bank through AIR.</i> <i>II. However necessary changes can be suggested in Negotiable Instrument Act.</i>
263.	Valuation of shares- Section 56(2)(viib)	The Finance Act, 2012 had inserted clause (viib) in section 56(2) to provide that if the consideration for shares is in excess of the fair value of the shares, the aggregate consideration received in excess of the fair value determined as per method prescribed or substantiated by the company to the Assessing Officer based on the value of its assets, would be taxable as the	(i) A proviso similar to the proviso to section 56(2)(viiia) should be incorporated in section 56(2)(viib) as well. Further, the proviso should also cover transactions not regarded as transfer under sections 47(vi) and 47(vib). (ii) Valuation Report from an 'Accountant'



Sr . N o.	Section	Issue/Justification	Suggestion
		income of a closely held company. The detailed suggestions regarding the draft rule which prescribes for determination of fair market value of shares was submitted by ICAI to the Board. In furtherance to the same, it is submitted that the provisions of this clause should not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47. Such exemptions have been provided in relation to section 56(2)(viia).	<i>may be admissible so as to determine the fair market value of unquoted equity shares.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
264.	Sec.115-O a) Inter Corporate Dividend Distribution Tax (DDT)	The Finance Act, 2008 amended the provisions of section 115-O to eliminate the hardship of double taxation arising on account of cascading effect of DDT in case of inter-corporate dividend. This is a step in right direction. However, the same mitigates the hardship partially. The real objective should be to eliminate the cascading effect of DDT in case of inter corporate receipt & distribution of dividend. The amendment made in the section is very restrictive as it confines to receipt and distribution of dividend only at one level. It	<i>For the reasons given, it is suggested that the system of tax credit for the dividend distribution tax paid by the subsidiary companies against the dividend distribution tax payable by the respective holding companies at all levels be introduced.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		applies only to dividend received by holding company from its subsidiary and that too it applies to only one level. In view of this, the double taxation of DDT continues in all other situations of inter-corporate receipt and distribution of dividends. For commercial and other legitimate business needs, inter-corporate shareholding is almost unavoidable. Therefore, amendment in section 115-O is required to eliminate the double taxation arising on account of cascading effect of DDT in all such cases. Alternatively, the amendment should not be confined to one level of Holding - Subsidiary relationship. The same should cover all the levels. It may be noted that in view of the business requirements, which necessitate the formation of subsidiaries, the domestic tax system needs to be tuned in alignment with business requirements. In fact, this problem was recognized in the Income-tax Act itself in old Section 80M which provided mechanism to avoid double taxation in such cases.	
	b) Grossing up of rate of dividend distribution tax	Section 115-O was introduced via Finance Act, 1997 w.e.f 1.6.1997, with a view to reduce the hardship caused to the shareholders due to the	<i>In order to encourage small shareholders to invest in domestic companies, it is suggested to drop the</i>



Sr . N o.	Section	Issue/Justification	Suggestion									
		procedural work for refund and a lot of paper work. It was provided that any dividend declared by an Indian company will be taxable in the hands of the company and it would be tax free in the hands of the shareholders. The rate of dividend distribution tax was increased over the years to 15% (plus surcharge and education cess). However, the Finance (No. 2) Act 2014 provided for the rate of dividend distribution tax to be grossed up w.e.f. 1 October, 2014. Thus, the effective dividend distribution tax rate would increase to 17.647% (plus surcharge and education cess). Table below will illustrate the difference in cash outflow after the amendment: <table><tr><th>Particulars</th><th>Pre-Budget</th><th>Post Budget</th></tr><tr><td>Dividend declared</td><td>500</td><td>500</td></tr><tr><td>DDT (Incl. of surcharge and education Cess)</td><td>84.975</td><td>99.95</td></tr></table>	Particulars	Pre-Budget	Post Budget	Dividend declared	500	500	DDT (Incl. of surcharge and education Cess)	84.975	99.95	requirement of grossing up the dividend distribution tax rate.
Particulars	Pre-Budget	Post Budget										
Dividend declared	500	500										
DDT (Incl. of surcharge and education Cess)	84.975	99.95										



Sr . N o.	Section	Issue/Justification			Suggestion
		Total Outflow for the company 584.975 599.95 If the company decides to keep the outflow constant i.e. Rs 584.975/-, then as per the amendment, dividend to be received in the hands of shareholders would reduce to Rs 487.52/- [584.975*500/599.95] as compared to Rs 500/-. In other words shareholders would receive 2.499% less as compared to what they would have received under the current provisions. Even though dividend income is exempt in the hands of shareholders, it will mainly affect the large number of small shareholders, whose income is below exemption limit or whose taxable income falls within the tax bracket of 10%. (i.e. less than Rs 5 lakhs) as they would have paid tax on dividend received at a lower rate. Further, the total outflow for the company would also increase by 2.99% (including surcharge and education cess)			
	c) Abolition of dividend	Dividend Distribution Tax was introduced way back in 1997. It was introduced			In order to do away with highly unjustified double taxation on



Sr . N o.	Section	Issue/Justification	Suggestion
	distribution tax (DDT)	under the basic premise that it will restrict the exorbitant dividends paid by corporate sector. Further, it would give a push to the investments as the corporate sector would prefer to plough back the profits and put it for fruitful purposes. Also, it would put an end to the long drawn and cumbersome process of paper work done by dividend recipient assesseees for refund purposes. The Finance (No. 2) Act, 2014 provided for the rate of dividend distribution tax to be grossed up w.e.f. 1 October, 2014. Thus, the effective dividend distribution tax rate has increased to 17.647% (plus surcharge and education cess). Such high rate of DDT has many problems associated with it as follows: ➤ DDT is a double taxation of the same income as it is calculated after the corporate tax has been paid by the company assessee which is highly unjustified. ➤ It acts as a disincentive for the retail investors to put their money in corporate stocks and shares. Most corporate sector in India do	<i>corporate sector and to act as an incentive for investment in shares to retail investors, it is suggested that it is high time to do away with the additional income tax in the form of dividend distribution tax under section 115-O of the Income-tax Act, 1961.</i> <i>In case it is not possible to remove the dividend Distribution tax, a basic exemption limit say 10% of profits/capital be provided where the company distributing Dividend upto 10% is not made liable to DDT.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		not prefer to declare dividend as high rate of DDT is an impediment and leaves them with limited resources after the distribution. As a result, the retail investors are not getting any regular returns even from profit making companies and hence are reluctant to invest their hard earned money in shares.	
265.	TDS on payment made to non-residents	a) Section 195(1) of the Income-tax Act, 1961 provides for the applicability of TDS provisions on “any person” responsible for paying to a “non-resident” subject to exceptions as provided in the section. Practically, the fact that every person including individuals, making any payment to non-residents, is liable to deduct tax at source is not known to many. There have been instances where the payment of rent is made to a non-resident through online banking by a salaried employee who is claiming HRA, without knowing that he is required to deduct tax. This not only leads to loss of revenue but also causes hardship to the assessee only due to ignorance of law, which but of course is not an excuse. b) Section 195(2) provides that where the person responsible	<i>It is suggested that</i> <i>a) the fact that any person including individuals, making any payment to non-residents, is liable to deduct tax at source should be widely publicized by the Department.</i> <i>b) To remove administrative hassles, the payer or the payee should be allowed to issue certificate for short or non-deduction of tax at source) Since a benefit has been extended to the assessee by way of the provisions of section 54 to 54F, the same should be taken into account by the Assessing officers while issuing certificate of lower deduction of tax at source or no deduction under section 195 and 197.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		for paying any sum chargeable under this Act to a non-resident considers that whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing officer to determine by general or special order, the appropriate portion of sum so chargeable. Further section 195(3) gives the recipient an option to make an application to Assessing Officer for the grant of certificate authorizing him to receive any sum without deduction of tax at source, subject to the rules notified in this regard. Making an application to the Assessing officer and follow ups thereafter leads to administrative hassles. c) The provisions of section 54 to 54F relating to investments allow the assessee to save tax on capital gains arising from transfer of property. However, such investments are made over the period of time i.e. within 6 months or 1 year. Certain assessee face hardship on this account since their income becomes non-chargeable to tax only after taking into consideration the proposed investments. The issue arises since the investments proposed to be made under sections 54 to 54F	



Sr . N o.	Section	Issue/Justification	Suggestion
		are not taken into account by the Assessing Officer while giving a certificate of lower deduction of tax at source or no deduction of tax.	
266.	Validity of Certificate issued under section 197	The Certificate under section 197 is at present issued with a validity date from the date of issue. Though the assessee is applying in the month of April, i.e., at the beginning of the financial year, the certificate is issued much later. The date of issue is taken as the validity date owing to which, the deductors are deducting the tax for the earlier part of income/payments. By any reasonable estimate, an assessee cannot have taxable income for some part of the financial year and exempt income for remaining part of the year.	It is suggested that a) <i>the certificate should be issued / application should be decided atleast before 15th June of the financial year i.e. within three months of commencement of the financial year before planning for advance tax.</i> b) <i>Such application should be disposed off within 30 days.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
267.	Mismatch on account of punching of data	The non-government deductors majorly comprise of non-corporate sector which is not very organized. Approximately less than 6000 assessee are listed companies who take the help of professionals to file statements of TDS/TCS in time. Approximately, 6,60,000 assessee are private limited Companies, but majority of them are family organizations or organizations among the friends registered as Private Limited companies under	<i>In continuation of the above suggestion, the following is suggested :</i> <i>To avoid such data mismatch, it is necessary to have a PAN/TAN master file for each and every deductor. CPC(TDS) may prepare a software freely downloadable for all deductors wherein deductor may fill in the details like name, PAN and the applicable section/s for deduction (it may be</i>



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		Companies Act. Further, last year there were approximately 18,00,000 tax audit assesseees. This clearly reflects that more than 66% of the assesseees who are liable to deduct TDS are non-corporate entities comprising of Individuals, HUFs, firms etc. In addition to above, certain non corporate and NGOs are also mandatorily liable to deduct TDS. The data entry in the non-corporate sector is majorly done by persons who are not even graduates. This has infact lead to the problem of huge mismatch of data of the deductees. There are clerical errors like wrong punching of name details, PAN details, Section under which data is punched and the like.	<i>one section or more than one).This temporary master file may then be uploaded back. The CPC(TDS) may verify the details so submitted and provide the deductor with error details, if any. The deductor may then rectify the errors and resubmit it. The process goes on unless the Department agrees with the data provided by the deductor. The final data so generated may be stored as a master file for that deductor in the database of the Department.</i> <i>The deductor while making payment every month through e-challan will click on the section for which payment is to be made. Once a particular section is clicked, all the parties registered under that section will appear. The deductor may accordingly, fill the details of amount and submit the same along with the payment of taxes. The deductees for which no tax has been deducted may be reflected/prefilled as "0". This will on one hand enable the deductor</i>



Sr . N o.	Section	Issue/Justification	Suggestion
			to save time on rechecking his details at the time of quarterly filing of TDS returns and on the other hand provide monthly credit details in the Form 26AS of the deductee. Since the data will be downloaded from TAN/PAN master verified by the Department, there will be "0" mismatch situation, which is the need of the hour. (SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)
268.	Time limit for TDS assessments of payments made to non-residents	Presently, there is no time limit specified by the Act for initiating & completion of TDS proceedings under section 201 of the Act in respect of payments made to non-residents. Thus, the TDS returns are scrutinized by the assessing officers for past years without any limit, which has resulted into enormous difficulty for the assessee as it becomes practically difficult to store & retrieve data beyond four years of filing of TDS returns.	<i>It is suggested to fix a specific time limit for initiating & completing TDS proceedings under section 201 of the Act in respect of payments made to non residents which should not be more than 4 years from the relevant financial year.</i>
269.	Section 201(1A)-Consequences of failure to deduct or pay TDS	As per the provisions of section 201(1A), interest is charged on monthly basis. Even for delay in payment or deduction of tax at source by one day, interest is	<i>It is suggested that interest under section 201(1A) should be charged on daily basis and not on monthly basis or if the</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		charged for the whole month. Under clause (ii) of section 201(1A), interest is payable at the rate of one and one-half percent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid. Delay from the due date of payment to the date of actual payment is not considered. e.g. if the tax was deducted on 01/09/2014 the same has to be paid by 07/10/2014. If the tax was paid on 08/10/2014 i.e. only one day delay, interest for the two month will be charged i.e. from 01/09/2014 to 08/10/2014. It is suggested that the delay from the due date of payment to the date of actual payment should be considered for the purpose of calculating interest. Further, since all the returns of TDS are now days processed electronically and interest is calculated by the computer, there is no procedural hurdle in charging interest on daily basis, infact charging the same on daily basis will provide relief to the taxpayers. It may be noted that in all the indirect tax laws interest is charged on daily basis. Since the TDS is a routine business work, delay of	<i>interest is to be charged on monthly basis then delay should be rounded off to the nearest month and the present system of considering fraction of month as full month should be dispensed with.</i> <i>It is further suggested that interest under clause (ii) of section 201(1A) should be charged for the delay FROM THE DUE DATE OF PAYMENT TO THE ACTUAL DATE OF PAYMENT.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr . N o.	Section	Issue/Justification	Suggestion
		one-two days in payment is not abnormal and punishing for such delay by charging interest for the whole month may not be appropriate.	
270.	Section 245Q – Need for Rationalisation of filing fees for AAR	Vide the Finance Act, 2017, section 245Q has been amended so as to enlarge/expand the scope of Authority for Advance Rulings to cover cases relating to central excise, custom duty and service tax and thus have single AAR for both Direct and indirect-tax dispute instead of 2 separate benches. Fees for filing application for advance ruling for Indirect-tax dispute amounts to Rs.2500/-. As against the same the filing fees for AAR for direct-tax dispute as per Rule 44E which has been increased from Rs.10,000 to Rs.2 lakhs to Rs.10 lakhs depending on value of transactions (w.e.f 28 November 2014).	<i>In view of the aforesaid, it is suggested that fees for filing of AAR for direct-tax disputes may be brought in line with Indirect-tax dispute since, the matters are going to be decided by the same authority for direct-tax and indirect-tax disputes.</i> <i>Further, since Goods and Services Tax law has been made applicable in India w.e.f. 1.7.2017 replacing the major indirect tax levies like Central Excise, Value Added Tax/Sales Tax and the Service Tax law etc., appropriate amendments may be carried out at relevant places in Income-tax law eg section 245Q and section 28 etc.</i>
271.	Section 255 – Limit of Rs 50 lakhs may be made w.r.t. disputed income instead of total income	Section 255(3) as amended by the Finance Act, 2016 provides that a single member bench may dispose of a case where the total income as computed by the Assessing Officer does not exceed fifty lakh rupees. Earlier the limit was Rs 15 lakhs. The said limit is raised to	<i>It is suggested that Section 255 dealing with cases which a single ITAT member can deal may be amended so that limit of Rs 50 lakhs may be considered w.r.t. 'disputed income' instead of Total income.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		Rs 50 lakhs due to increase in monetary limit for filing appeal before ITAT and to expedite the process of dispute resolution at the level of ITAT. However, to truly achieve the legislative intent, instead of total income, disputed income may be considered. It would ensure fast track disposal of litigations of small amount.	
272.	Quarterly audit of TDS compliances	Since a major part of the income tax revenue is collected through deduction of tax at source, errors committed at this point in time prove costly to the exchequer. Currently withheld tax is deposited monthly and TDS statements are furnished quarterly. Further there is no mechanism as on date to have a check on the correct deduction of tax and its payment. A lot of work related to TDS compliances in majority of the non organized sector is handled by either graduates or non professionals who may not be well versed with the applicable TDS provisions. The income tax department is having limited resources to check and cross verify all the TDS statements furnished quarterly. It is the need of the hour that the TDS statements filed quarterly are certified by a professional to enhance its	<i>In view of the aforesaid, it is suggested that a provision may be made whereby all transactions pertaining to TDS provisions are audited by a professional once every quarter before filing of TDS statement which will lead to early detection of errors and maximizing the revenue to the government.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		accuracy and thereby minimizing the loss in revenue to the government.	
273.	<i>Taxability of National Pension Scheme</i>	Currently, the National Pension Scheme (NPS) works on Exempt, Exempt, Tax (EET) regime whereby the monthly/ periodic contributions during the pension accumulation phase are allowed as deduction for Income-tax purposes, the returns generated on these contributions during the accumulation phase are also exempt from tax, however, the terminal benefits on exit or superannuation, in the form of lump sum withdrawals, are partially taxable in the hands of the taxpayer in the year of receipt of such amount. An amendment was introduced by Finance Act, 2016, wherein forty percent of the accumulated corpus upon withdrawal/ superannuation was made tax-free whilst balance corpus of sixty percent continues to be taxable.	<i>In order to encourage taxpayers to make voluntary higher contributions towards NPS, it should be made more tax-friendly as the objective of this scheme is to create a pensionable society. Accordingly, the tax regime of NPS should be made Exempt, Exempt, Exempt (EEE) from the current EET regime on the lines of other retirement schemes like Employee Provident Fund and Public Provident Fund.</i>
274.	<i>Association of Persons vis-à-vis EPC contracts/turnkey projects</i>	<i>Applicability of the CBDT Circular on formation of AOP vis-à-vis the EPC contracts/ turnkey projects in case of associate enterprise being a member of the consortium</i> The term 'Association of Persons' (AOP) has not been defined in the Act. The issue as to what constitutes AOP was	<i>It is suggested that the benefit of this Circular should also be extended to AE situations where such AEs are members of the consortium for executing EPC/turnkey contracts.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		considered by the Supreme Court in certain cases. The Supreme Court has observed that there is no formula of the universal application so as to conclusively decide the existence of an AOP and it would rather depend upon the particular facts and circumstances of each case. With a view to avoid tax disputes and to have consistency in approach while handling these cases, CBDT issued a Circular No. 7 of 2016, dated 7 March 2016 clarifying that a consortium arrangement for executing EPC/turnkey contracts which have the specified attributes may not be treated as an AOP. The CBDT also clarified that there may be other additional factors also which may justify that a consortium is not an AOP, and the same shall depend upon the specific facts and circumstances of a particular case, which needs to be taken into consideration while taking a view in the matter. However, the Circular states that it shall not apply where all or some of the members of the consortium are Associated Enterprises (AE) under Section 92A of the Act. In such cases the AO shall decide whether an	



Sr . N o.	Section	Issue/Justification	Suggestion
		AOP is formed or not, keeping in view the relevant provisions of the Act and judicial precedents on the issue.	
275.	TDS credit should be allowed solely on the basis of Form 26AS and procedural requirements for issuance of TDS certificates (Form 16 / 16A) should be dispensed with	Regulation in force Section 203 of the Act requires the deductor of TDS to issue the TDS certificate to the deductee to the effect that tax has been deducted and specifying the amount so deducted. The deductor has to log in to the TDS CPC website and download the certificate of the deductee and then send such certificate to the deductee. The procedural compliance apparently looks easy and very convenient. However in reality, the deductors and deductees face numerous difficulties in practically complying with the same. These difficulties are explained as follows: Practical difficulties faced by deductor Every quarter the deductor is required to login into the TDS Reconciliation Analysis and Correction Enabling System (TRACES) website and download TDS certificate for all the deductees and forward the same to each deductee. In case deductor is a big organisation which has deducted TDS for thousands of parties, it is required to send the TDS	<i>TDS credit should be allowed purely on the basis of Form 26AS (irrespective of the fact whether the same has been claimed in the return or not) and the procedural requirement for issue or obtaining of TDS certificate in the Form 16A should be dispensed with. CBDT must ensure that this is implemented at ground level and AO grant TDS credit as per 26AS and do not insist for production of Form 16A.</i>



<i>Sr . N o.</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		certificate through mail or post separately to each deductee. Issuing TDS certificate to thousands of parties every quarter poses challenges and also consumes lot of time which can otherwise be used for operations of the deductor. This sometimes leads to incomplete or non-compliance with issue of TDS certificates. Though there are penal provisions provided under the Act for non-issuance of TDS certificate by the deductor, in practice the AO do not enforce those provisions. Practical difficulties faced by the deductee It is the deductee who actually suffers by way of denial of TDS credit in absence of TDS certificate and therefore it is a must for the deductee to continuously chase each deductor for issue of TDS certificate. It may be relevant to mention here that the AO's do not always give TDS credit, especially for years in the past, on basis of Form 26AS appearing in the system but require hard copies of the TDS certificates.	



Sr . N o.	Section	Issue/Justification	Suggestion
		Section 199 of the Act and Rule 37BA of Income-tax Rules in relation to grant of TDS credit Conjoint reading of the Section 199 of the Act and Rule 37BA of the Rules framed thereunder suggests that credit for the tax deduction should be given/granted on the basis of information relating to deduction furnished by the deductor (i.e. Form 26AS) and the information in the return of income of the claimant. The requisite details in respect of the tax deducted at source are available in the Form 26AS. The taxpayer may furnish the information relating to tax deducted at source in the return of income based on the details available in Form 26AS leading to inference that both the information furnished by deductor and information in the return of income are as per Form 26AS. CBDT Circulars on issuing of TDS certificate The CBDT vide Circular No 3/2011 dated 13 May 2011 and Circular No 1/2012 dated 9 April 2012 has mandated for all deductors to issue Form 16A which is generated from TIN	



Sr . N o.	Section	Issue/Justification	Suggestion
		(Tax Information Network) website. Further the CBDT in para 3 of Circular No 3/2011 specifically mentioned as under: <i>"3. The Department has <u>already enabled the online viewing of Form No. 26AS by deductees which contains TDS details of the deductee based on the TDS statement (e-TDS statement) filed electronically by the deductor. Ideally, there should not be any mismatch between the figures reported in TDS certificate in Form No. 16A issued by the deductor and figures contained in Form No.26AS which has been generated on the basis of e-TDS statement filed by the deductor.</u> However, it has been found that in some cases the figures contained in Form No. 26AS are different from the figures reported in Form No.16A. The gaps in Form No.</i>	



Sr . N o.	Section	Issue/Justification	Suggestion
		26AS and TDS certificate in Form No. 16A arise mainly on account of wrong data entry by the deductor or non-filing of e-TDS statement by the deductor. As at present, the activity of issuance of Form No.16A is distinct and independent of filing of e-TDS statement, the chances of mismatch between TDS certificate in Form No.16A and Form No. 26AS cannot be completely ruled out. To overcome the challenge of mismatch a common link has now been created between the TDS certificate in Form No.16A and Form No. 26AS through a facility in the Tax Information Network website (TIN Website) which will enable a deductor to download TDS certificate in Form No.16A from the TIN Website based on the figures reported in e-TDS statement filed by him. <u>As both Form No.16A and Form</u>	



Sr . N o.	Section	Issue/Justification	Suggestion
		<u>No.26AS will be generated on the basis of figures reported by the deductor in the e-TDS statement filed, the likelihood of mismatch between Form No.16A and Form No.26AS will be completely eliminated".</u> • CBDT Instruction No. 4/2012 [F. No. 225/34/2011-ITA.II] dated 25 May 2012 states that "<u>where the difference between the TDS claim and matching TDS amount reported in AS-26 data does not exceed Rs Five thousands, the TDS claim may be accepted without verification.</u>" CBDT Instruction 1 / 2012 dated 2 February 2012 and Instruction 2 / 2011 dated 9 February 2011 provides similarly. • CBDT Instruction No. 4/2014 [F. No. 225/151/2014/ITA.II] dated 7 April 2014 at para (5.2.a) reads "AO	



Sr . N o.	Section	Issue/Justification	Suggestion
		<i>should verify whether TDS credits claimed by the taxpayer are available in the 26AS. If the credits are available in 26AS, a suitable rectification order.....should be passed".</i> • CBDT'S Action Plan for the First Quarter of FY 2015-16 dated 24 March 2015 refers to "<i>....(b) Giving credit for prepaid taxes, reflected in Form 26AS post processing....</i>". The above clearly demonstrates that there would not be any variation between TDS credit reflecting in the Form 26AS and TDS credit as per Form 16A. Further, in addition to these circulars, the CBDT in Central Actions plan of 2015 has also directed to give TDS credit on the basis of Form 26AS. Thus, reducing the relevance of Form 16A for the purpose of claiming TDS credit. It is requested that CBDT may call for details of cases in which TDS credit has been denied on the basis that credit was available on the basis of 26AS	



Sr . N o.	Section	Issue/Justification	Suggestion
		but not on basis of data in department's system. This would demonstrate that the CBDT instructions are not clear at the ground level. We also request that once again clear instructions may be reiterated to the field officers.	
276.	<i>Provision for the employer to provide tax treaty benefits while calculating TDS</i>	Under the current tax regime, there is no provision under the Act which enables an employer to consider admissible benefits under the respective Double Taxation Avoidance Agreements (e.g. credit for taxes paid in another country/ treaty exclusions of income etc.), while computing tax to be deducted under Section 192 at the time of payment of salaries to employees. Further, the foreign tax credit rules notified by the CBDT in June 2016 also does not contain explicit provision for providing credit for taxes paid in another country by the employer at the time of deduction of tax on salary payments. Due to the above, it creates cash out-flow issues to the employees (migrating employees coming to and leaving India) who are initially subject to full TDS by their employers and thereafter required to claim refunds on account of tax treaty benefits	<i>It is recommended to provide for claiming relief available under the tax treaty, at the time of TDS.</i>



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Sr No.	Section	Issue/Justification	Suggestion
		while filing their income tax return. Many of these employees may complete their assignments and leave India prior to obtaining their tax refunds which also creates hardships with respect to receiving back the refund amounts.	
277.	TDS on monthly and year end provision entries in books of account	Most of the companies record provision entries made towards various expenditures on a monthly basis to report performance to the parent entities that are reversed on the first day of the subsequent month. While these accruals are made on a very broad estimate for reporting purposes, the tax officers have been insisting to deduct tax on such provisional entries. Year-end provisions are made by taxpayers to follow accrual system of accounting. Very often provision for expenses at the year-end are made based on best estimates available with the taxpayer even if the supporting invoice is received at the subsequent date. In certain instances, even the payees are not identifiable; however the year-end provisions are made by taxpayers. As per the current tax regime, tax is required to be deducted	<i>Relief from deduction of tax at source should be given to the payee on payments that are accrued but are not due and represents only a provision made on a monthly basis for reporting purpose that are reversed on the first day of the subsequent month. Further, the relief should also be given from deduction of tax at source on payments for which the payees are not identifiable. The Tribunal has also held the same in certain cases⁸.</i>

⁸ Industrial Development Bank of India v. ITO (2007) (107 ITD 45) (Mum) and Dishnet Wireless Limited (ITA Nos. 320 to 329/Mds/2014) (Chennai)



Sr . N o.	Section	Issue/Justification	Suggestion
		on such provisions which often leads to excess deduction and deposit of tax, disputes with the vendor and unnecessary burden posed on the payer in carrying extensive reconciliations.	
278.	<i>TDS credit should be allowed on the basis of Form 26AS, even if the payee has not claimed the same in the return of income (due to non updation of Form 26AS) but has claimed TDS credit during the assessment proceedings (during which time the updated TDS credit is reflected in Form 26AS)</i>	TDS credit should be allowed on the basis of Form 26AS, even if the payee has not claimed the same in the return of income (due to non updation of Form 26AS) but has claimed TDS credit during the assessment proceedings (during which time the updated TDS credit is reflected in Form 26AS) Options available for claiming TDS credit to the taxpayer A taxpayer claims credit of TDS on the basis of TDS figures reflected in Form 26AS at the time of filing the return of income. Continuous update of Form 26AS Later on, the figures of TDS reflected in Form 26AS undergoes change owing to update/revision of TDS returns by tax deductor, thereby taxpayer needs to claim such enhanced credit of tax deducted by deductor on behalf of taxpayer. Taxpayer has following options to avail such enhanced tax credit.	<i>Instructions could be issued to the field officers to accept Form 26AS based TDS credit claims during assessment proceedings (or even after completion of assessment proceedings), subject to the only condition that the taxpayer furnishes evidence that the corresponding income had been shown in the income tax return.</i> <i>Instructions should also be issued for processing of rectification application filed by the taxpayer under section 154 of the Act for revising its claim for credit of TDS as per updated Form 26AS</i> <i>This would save substantial time of the tax officers and taxpayers. This taxpayer friendly measure would not cause any loss to the revenue.</i>



Sr . N o.	Section	Issue/Justification	Suggestion
		Filing of Revised Return A taxpayer can claim enhanced tax credit by filing of revised return within the time specified for filing of revised return. However, Form 26AS may keep on changing/enhancing post filing of revised return and hence there is still a need for taxpayer to lodge additional claim for tax credit. Filing of enhanced claim of TDS credit as per updated Form 26AS during the course of assessment proceedings Once the time limit for filing the revised return expires, the option to claim such enhanced TDS credit is to lodge the claim during the course of assessment proceedings along with the necessary supporting evidence. However, some of the AO's do not accept such claims during assessment proceedings and mention that taxpayer should have claimed it in the revised return of income. The tax payer is unable to claim the said enhanced TDS credit as the time limit for filing the revised return is already lapsed. Then the other option left with the taxpayer is: • Filing of rectification application - In case the relevant assessment has already been completed, the request for Form 26AS based increased TDS credit claim by way of rectification	



Sr . N o.	Section	Issue/Justification	Suggestion
		under section 154 is denied on the ground that the same has not been claimed in the revised return of income. • Approach CBDT under section 119(2)(b) of the Act for the said claim – However as per Circular No. 9/2015 dated 9 June, 2015, the taxpayer has to forgo interest on eligible refunds under this section and hence not a suitable option for taxpayer. Problems faced by the taxpayer The taxpayer has to file a revised return with the figure of tax credit appearing in the Form 26AS at the time of filing the revised return. However, this figure changes as the Form 26AS gets updated during the time of assessment proceedings. Thus, the taxpayer has to first file a revised return and then again request for the updated tax credit as per the revised Form 26AS during the assessment proceedings. However, as stated above the AOs do not accept the said claim and accordingly, the taxpayer has to approach CBDT under section 119(2)(b) of the Act. Filing of revised return to claim TDS credit already appearing in Form 26AS and/or	



Sr No.	Section	Issue/Justification	Suggestion																														
		approaching CBDT under section 119(2)(b) of the Act, would only be procedural formalities which may not serve any useful purpose but would claim lot of time of taxpayers and the tax officers. Further in a situation where intimation under Section 143(1) of the Act is issued subsequent to the filing of return of income, where no proper assessment proceedings have taken place, there is no mechanism for the taxpayer to make a claim for TDS credit.																															
279.	Limits for various salary related allowances exempt from tax	Currently following is the limit for certain tax free allowances: <table><tr><th>Sr. No</th><th>Salary Component</th><th>Existing exemption limit</th></tr><tr><td>1</td><td>Medical Reimbursements</td><td>Rs 15,000 p.a.</td></tr><tr><td>2</td><td>Children Education Allowance</td><td>Rs 100 per month per child</td></tr><tr><td>3</td><td>Children Hostel Allowance</td><td>Rs 300 per month per child</td></tr><tr><td>4</td><td>Lunch / refreshment perks (i.e. Meal Coupons)</td><td>Rs 50 per meal</td></tr></table>	Sr. No	Salary Component	Existing exemption limit	1	Medical Reimbursements	Rs 15,000 p.a.	2	Children Education Allowance	Rs 100 per month per child	3	Children Hostel Allowance	Rs 300 per month per child	4	Lunch / refreshment perks (i.e. Meal Coupons)	Rs 50 per meal	It is recommended to enhance these limits to the following: <table><tr><th>S. No</th><th>Salary Component</th><th>Recommended exemption limit</th></tr><tr><td>1</td><td>Medical Reimbursements</td><td>Rs 50,000 p.a.</td></tr><tr><td>2</td><td>Children Education Allowance</td><td>Rs 500 per month per child</td></tr><tr><td>3</td><td>Children Hostel Allowance</td><td>Rs 1,500 per month per child</td></tr><tr><td>4</td><td>Lunch / refreshment perks (i.e. Meal Coupons)</td><td>Rs 100 per meal</td></tr></table>	S. No	Salary Component	Recommended exemption limit	1	Medical Reimbursements	Rs 50,000 p.a.	2	Children Education Allowance	Rs 500 per month per child	3	Children Hostel Allowance	Rs 1,500 per month per child	4	Lunch / refreshment perks (i.e. Meal Coupons)	Rs 100 per meal
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Sr . N o.	Section	Issue/Justification	Suggestion
		These limits have been fixed more than a decade ago.	
280.	Lower deduction certificate u/s 197 through TRACES Site	TDS CPC has been one of the successful projects of the Government for online tracking of the Tax deducted, deposited, corrections and reconciliations. Now with this system the govt. is tracking the default and issuing online notices and communication for immediate correction and payment of shortfall as the case may be. However one area of TDS relating to lower Tax deduction certificates (LDC's) issued by the jurisdictional tax authority is another area field which needs to move online. As per the prevailing practice an assessee has to file form 13 requesting the officer handling TDS for a LDC. The officer calls for information relating to Returned/assessed income from the assessee and finds out the average rate at which tax is paid by the assessee. Based on this rate, he issues LDC. Thus it is only an arithmetical calculation which is based on the data which is already available with the department in its computer systems.	<i>It is proposed that TRACES site should develop an utility to do the above calculation for issuing such certificate in time bound manner. The existing Form 13 should be modified accordingly and various fields related to returned income, tax paid, tax deducted should be automatically linked with the data already available in the TRACES Site. As all tax Returns are being E filed also the tax audit reports are being uploaded on the system the information is already in the public domain, it is merely a question of putting proper links and checks to cross verify the details fed by the assessee (the onus is on assessee self-certification). In case there is some discrepancy the system should throw up the defaults/ errors which need to be attended by the tax payer and resubmit the form.</i> <i>This will be in line with the</i>



Sr . N o.	Section	Issue/Justification	Suggestion
			<i>government's keenness to increase the use of technology in service delivery to public and also save a lot of time/ trouble involved in obtaining a lower rate certificate for TDS. Additionally, as a part of go green initiative the requirement of issuing of TDS certificates should be dispensed with, going ahead.</i>



ANNEXURE I

Sr. No.	Section	Limit (A) (Rs.)	Year of introduction/ last modification	Suggestive limit as per current CII (Rs)
a)	Workmen compensation-10(10B)	500,000.00	April, 1976 (Notification no. 10969 dt. 25-6-1999)	10,00,000
b)	Leave encashment-10(10AA)	300,000.00	May, 2002	5,00,000
c)	Voluntary Retirement or termination-10(10C)	500,000.00	April, 2001 (amended)	10,00,000
d)	Entertainment Allowance 16(ii)	Exempt least of the following: i) 5000 ii) 20% of Basic salary iii) amount actually received	April, 2002 (amended)	12,000
e)	Hilly Area Compensatory all.	Rs. 800 p.m.		3,000
f)	Section 17	Motor car (perquisite) : (A) Car owned by employee: If car is partly used for official & partly for private purpose: Actual expenditure Less: Amount of office use (ie 1800 pm if engine does not exceed 1.6 lt or Rs. 2400 pm if exceeds 1.6 ltr and Rs. 900 pm if chauffeur is provided) (B) Car owned or hired by employer: (i) If car is partly used for official & partly for private	Circular 15/2001, dated Dec 12, 2001	A) 3,968/5,290 B)



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		purpose: 1800 pm if engine does not exceed 1.6 lt or Rs. 2400 pm if exceeds 1.6 ltr and Rs. 900 pm if chauffeur is provided. (ii) If car is partly used for official & partly for private purpose & maintenance expenses (private use) borne by employee: Rs.600 pm if engine does not exceed 1.6 lt or Rs. 900 pm if exceeds 1.6 ltr and Rs. 900 pm if chauffeur is provided.		(ii) 1,323/1,984
g)		Lunch/refreshment (perk): Cost to employer in excess of Rs.50 per meal Less: recovered from employee	Circular 15/2001, dated Dec 12,2001	110
h)		Interest free or concessional loans: Small loans uptoRs. 20,000 in the aggregate are exempt. Loans for medical treatment specified in rule 3A are also exempt, provided the amount of loan for medical reimbursement is not reimbursed under any medical insurance scheme.	Circular 15/2001, dated Dec 12,2001	50,000
i)		Gift, voucher or token in lieu of gift: Rs.5000	Circular 15/2001, dated Dec 12,2001	11,000
j)	Section 64(1A) [Deduction u/s 10(32)]	Income of minor: Rs. 1500	April,1993	5,000
k)	Section 80C	Rs. 1,50,000	April,2015 (inserted by Finance (No.2) Act 2014	Rs. 2,00,000
l)	Section 80DDB	Rs.40,000 or actual expenditure} whichever is lower (others) Rs.60,000 or actual expenditure} whichever is lower (senior citizen)	April,2004 (inserted by Finance (No.2) Act 1996	i)1,00,000 ii) 1,50,000



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m)	Section 80QQB	Rs.3,00,000 or whole of such income whichever is lower	April,2004	5,00,000
n)	Section 80RRB	Rs.3,00,000 or whole of such income whichever is lower	April,2004	5,00,000
o)	Section 80TTA	10,000.00 All Deposits	April,2013	15,000
p)	Section 80P	Interest Income -Rs.20,000 Profit-Rs.50,000/Rs.1,00,000 (Consumer cooperative)	April,1968 April,1999(Substituted)	i) 48,278 ii)3,00,000/1,50,000
q)	First Schedule to the Finance Act	Rs. 2,50,000	April,2015 (inserted by Finance (No.2) Act 2014)	Rs. 3,00,000



Annexure A

Sr. No	Country	Eligibility	Applicability	Others
1.	Japan	- The Consolidated Tax Return System (CTRS) applies to a domestic parent corporation and its 100% domestic subsidiaries. - Foreign companies are excluded.	The amount of consolidated taxable income and tax liability is computed by aggregating the separate taxable incomes of the members of the consolidated group and adjusting for intercompany transactions, net operating losses, dividends received, donations etc.	Under the consolidated taxation system, the parent company files and pays the consolidated tax and each subsidiary bears joint and several liability for the tax payment
2.	France	- At least 95% of the share capital and the voting rights of the subsidiary must be held directly, or indirectly, by the parent company of the group. - Also, currently applicable to (i) foreign companies in respect of their permanent establishments in France subject to French corporate tax, provided that at least 95% of that foreign company's capital is held by a French parent company and (ii) French subsidiaries held through a foreign parent company situated in the European Union, Norway or Iceland	- Each member of the consolidated group (parent company included), in particular, must first assess its separate taxable income as if it was taxed on a stand-alone basis. A number of special rules, however, apply at this stage - The group's taxable income will, afterwards, be computed by the group's parent company. The latter will totalize the positive and negative tax results of all group members and, subsequently, make the necessary adjustments like neutralization of intra-group asset or share transfers, intra-group dividends etc.	- If a member company leaves the consolidated tax group, the adjustments previously made at the level of the consolidated income may be reassessed according to the standard rules and, accordingly, give rise to additional taxation in the hands of the departing company. - The consolidated tax group regime allows the parent company to



				become the only entity liable for tax assessed on the profits and losses by all the companies, which are members of the group. This regime requires also to neutralize, for corporate tax purposes, certain transactions within the group.
3.	Singapore	To qualify for the group relief scheme, companies must be, amongst others, incorporated in Singapore and be at least 75% owned, directly or indirectly by another company in the group that is incorporated in Singapore and must have the same accounting year.	The loss items that can be transferred and order of transfer are as follows: - current year unabsorbed capital allowances; - current year unabsorbed trade losses; and - current year unabsorbed donations.	- Consolidated returns are not permitted and each company is required to file a separate corporate tax return. - However, there is a group relief system in place under which current year unabsorbed losses, capital allowances and donations of one qualifying company can be set off



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				against the profits of another qualifying company.
4.	USA	(i) the parent corporation of the group must own directly 80% or more of the stock of at least one subsidiary in the group and (ii) each other subsidiary in the group must be 80% or more directly owned by the parent and/or other subsidiaries in the group.	The net operating losses of some members of the group can be used to offset the taxable income of other members of the group, and transactions between group members, such as intercompany sales and dividends, are generally deferred or eliminated until there is a transaction outside the group.	• The common parent is responsible for filing the consolidated corporate income tax return for the group • The common parent is the sole agent of the consolidated group for purposes of dealing with the IRS and the US Tax Court on all matters relating to the tax liability of the group. In addition, the IRS may deal directly with a subsidiary member with respect to its liability for the consolidated income tax of the group.
5.	Australia	• A Consolidated group consists of a head company and all of the wholly owned resident subsidiary members of the group, includes Partnership	• Consolidated groups file a single tax return and calculate their taxable income or loss ignoring all intra - group transactions.	• Once the head company elects to form a tax consolidated group, the



		• The wholly owned subsidiaries of a foreign resident company may also choose to form a consolidated group known as MEC (Multiple entry consolidated) • A choice to consolidate is not revocable.	• Generally, losses can be transferred to the group only if the losses could have been used outside the group by the entity seeking to transfer them. • Once a subsidiary member of a group transfers a loss, it is no longer available for use by the subsidiary, even if the subsidiary subsequently leaves the group.	head company becomes primarily responsible for income tax debts of the entire consolidated group. However, all members of the group have joint and several liability for income tax debts of the entire group, including penalties and general interest charges. • Transfer of losses between group companies are not allowed from 1 July, 2003 with certain exceptions. • A tax consolidated group is treated as one tax payer. Special notification is required in respect of formation, admission of



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				new members, etc.
6.	Spain	• The controlling company of the tax group must hold a 75% or higher interest, either directly or indirectly, and the majority of the voting rights in the companies forming the tax group • It is possible to consolidate Spanish entities without a common Spanish owner, insofar as the non-resident owner of the shares in all those entities does not reside in a tax haven and meets certain conditions to be deemed the parent company (inter alia, a 75% (70% if listed) participation in all entities). • A PE may qualify as controlling company if non resident entity does not reside in a tax heaven.	• If tax consolidation is granted, profits and losses within the group are eliminated • Losses derived from the transfer of a company which ceases to be part of the consolidated group must be reduced by the amount of any taxable losses previously generated by the transferred company and which had been already utilized by the group.	• All the consolidated companies must have the same closing date, and the financial period may not exceed 12 months. The consolidation must be approved in the shareholders' annual general meeting of each of the companies involved, including both controlling and dependent companies. • Consolidation is permitted for an indefinite period, provided that the group meets the prescribed requirements. • When the consolidation period expires, whether



				because a company leaves the group or it is disbanded, any remaining losses or credits are generally attributed to the affiliated companies in proportion to their contribution to the loss or credit
7.	United Kingdom	• A “group” normally means two or more UK resident companies where the parent company owns beneficially – whether directly or indirectly – at least 75% of the subsidiary company or companies • A consortium consists of UK resident companies which each own 5% or more and, together, own at least 75% of the ordinary share capital of a UK resident trading or holding company	• Group Relief:- Group relief is a mechanism that allows members of a corporation tax loss relief group to share the benefit of certain corporation tax losses. One member of the group can surrender these losses to another member of the group, which can deduct the loss from its total profits, thus reducing the amount of corporation tax payable. • Consortium Relief:- Consortium relief is an extension of group relief that allows the surrender of losses between companies owned by a consortium and the members of that consortium. There is no automatic use of group relief. It must be claimed in each period and is entirely voluntary.	• There is generally a ‘degroupping’ charge if the company leaves a 75% group within 6 years. • The Group Member to whom a tax refund is due, can surrender that refund to another member of that group. • There is no general provision in UK tax legislation for consolidated group tax treatment. However, there are certain reliefs



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				which apply to groups and consortia of companies. • Each Company in a group is taxed as a separate entity, subject to the rules prescribed.

ABOUT DIRECT TAXES COMMITTEE AND COMMITTEE ON INTERNATIONAL TAXATION OF ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants in India. During its more than six decades of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

The Council of ICAI functions through various Standing and Non-Standing Committees. Direct Taxes Committee and the Committee on International Taxation are amongst the most important non-Standing Committee's of ICAI. The main functions of these Committees is to examine the laws , rules, regulations, circulars, notifications etc. relating to Direct tax and international taxation which may be enacted or issued by the Government from time to time and to send suitable memoranda containing suggestions for improvements in the respective legislation. The Direct Taxes Committee and the Committee on International Taxation are actively involved in the process of formulation of budget by offering pre-budget and post-budget suggestions/ comments to simplify tax laws and their administration for the purpose of making it more responsive to tax payers.



Direct Taxes Committee and the Committee on International Taxation
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(Set up by an Act of Parliament)

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