

PRE-BUDGET MEMORANDUM - 2021

DIRECT TAXES AND INTERNATIONAL TAXATION



THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA

NEW DELHI



PRE-BUDGET MEMORANDUM – 2021 DIRECT TAXES AND INTERNATIONAL TAX

- 1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum - 2021 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 2021-22.
- 1.2 The suggestions have been broadly categorized under the following heads:
- Part A** : Suggestions relating to the policy & provisions of Income-tax Act, 1961
 - Part B** : Suggestions for improving Tax Administration and Citizen Services
 - Part C** : Suggestions pertaining to International Taxation
- 1.3 The suggestions are given Chapter wise and are intended to serve the following purpose:
- I. Improve tax collection.
 - II. Reduce/minimize litigations
 - III. Rationalization of the provisions of direct tax laws.
 - IV. Removal of administrative and procedural difficulties relating to Direct Taxes
 - V. Check tax avoidance



INDEX

Sr. No.	Suggestion	Page No.
PART A	SUGGESTIONS RELATING TO THE POLICY & PROVISIONS OF INCOME-TAX ACT, 1961	
CHAPTER I	PRELIMINARY	
1.	Section 2(14) – Treatment of LIP as capital asset	3
2.	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	3
3.	Section 2(42A) – Request to include all immovable properties	3
CHAPTER III	INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME	
4.	Section 10(10D) – Certain issues	5
5.	Section 10(12A) – Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers under section 10(12A) – Similar amendment may also be made in section 10(12B)	5
6.	Section 10(13) - Payment from approved superannuation fund	6
7.	Section 10 – Special exempt allowance to employees engaged in infra industry	7
8.	Section 10(23C) - Annual Receipts	7
9.	Section 10(23C) - Rationalisation of Provisions	8
10.	Section 10(23FB) - Tax exemption for Alternative Investment Funds – Venture Capital Funds	8
11.	Section 10(32) - Income of minors - to increase exemption limits	9
12.	Section 10(38) – grandfathering provisions for shares received by way of inheritance	10
13.	Section 11 - Restructuring of provisions regarding charitable institutions	10
14.	Section 11(2) – Extension in time for compliance	12
15.	Section 12(1) - Contribution received in kind without specific direction to form part of the corpus under tax net	12
16.	Section 12AA – Status of registration application	13
17.	Section 12AB – Process of registration/renewal of registration be completely digital without any human intervention	13
CHAPTER IV	COMPUTATION OF TOTAL INCOME	
18.	Deduction to salaried assesses - Payment for notice period	15
19.	Section 17 – Expenses incurred due to COVID19/lockdown/Work from home	15
20.	Section 23 - Deduction of interest from house property	16
21.	Section 23(1)(c) – Vacant house property	16
22.	Section 23(5) - Tax on unsold properties held as stock in trade	16
23.	Section 28(iiiia) – Sale of license	18
24.	Section 28(iiid) – Duty Entitlement Pass Book Scheme no more in existence	18



The Institute of Chartered Accountants of India

25.	Section 28(va) – Taxability of non-compete fees in the hands of payer	18
26.	Section 28(via) - Conversion of Stock-in-trade into Capital Asset	19
27.	Section 32 - Depreciation in case of slump sale	19
28.	Section 32AC - Slump Sale and investment allowance	21
29.	Section 35AD - Expenditure on Specified Business	23
30.	Section 35D - Amount paid for increase in authorized capital	23
31.	Due date for crediting the contribution of employees to the respective fund – Section 36(1)(va) read with Section 2(24)(x)	24
32.	Section 37 – Corporate Social Responsibility expenditure	25
33.	Section 40(ba) – Amendment w.r.t. taxation of consortiums/JVs/AOPs	26
34.	Section 40(b)(v) – Raise in allowable expenses in the form of remuneration to working partner	26
35.	Explanation 5 to Section 43(1) – “building” to be replaced by “assets”	26
36.	Section 43CA - Request to reconsider applicability on Real Estate industry	27
37.	Section 44AB – Steep increase in threshold limit from Rs 1 crore to Rs 5 crore subject to conditions specified for person carrying on business – Certain concerns/issues to be addressed	28
38.	Section 44AB – Provision to allow revision of tax audit report	31
39.	Section 44AB -Applicability of audit in specific case	32
40.	Section 44AD - Monetary limit for presumptive basis	33
41.	Section 44AD & section 44ADA – Remuneration and interest to partners	34
42.	Section 44AD -Presumptive Income – Some Issues	35
43.	Benefit of presumptive taxation to LLP - Section 44AD	35
44.	Section 44ADA - Special provision for computing profits and gains of profession on presumptive basis – Issues and concerns arising there from to be addressed	36
	(a) Threshold limit of Rs 50 lakhs may be increased	36
	(b) Rate of estimated income @ 50% too high	37
45.	Section 45(5A) - Taxation of joint development agreements (JDAs)	38
46.	Limited Liability Partnership (LLP) -	38
	(a) Section 47 – Insertion of clause (viab) to provide exemption in respect of transfer of capital asset consequent to amalgamation of foreign companies - Consequent exemption to be provided in respect of transfer of shares by resident shareholders	
	(b) Consequential amendment required in section 47(xiiib)	40
	(c) Section 47(xiiib) - Conversion of company into LLP – Clarification required relating to additional condition	40
47.	Section 47 – Request to include family settlement in the exceptions	41
48.	Sections 47(x) & (xa) and 49(2A) - Capital Gain on Conversion of Foreign Currency Exchangeable Bonds (FCEB) and other Bonds & Debentures	41
49.	Section 54 - Capital gain on sale of property used for residence	42
50.	Section 54/54F – Streamlining and capital gain exemption for investment	42
51.	Section 54EC - Time Limit for investment in specified bonds	43
52.	Section 55(2)(ac) – Clarification required to determine the cost of acquisition in case	45



	of Merger/Demerger etc.	
53.	Reference to the Valuation Officer - Section 55A	49
PART F	INCOME FROM OTHER SOURCES DETAILED SUGGESTIONS	
54.	Definition of the term relative - Explanation to Section 56(2) (vii)	50
55.	Section 56(2)(x) – Clarification w.r.t. issue of shares	50
56.	Section 56(2)(x) – Certain exceptions to be provided w.r.t. conversion	51
57.	Section 56(2)(x) – Certain other concerns to be addressed	52
58.	Section 57 – Removal of restriction of deduction of interest expense from dividend income upto 20% of such dividend income	53
CHAPTER VI	AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS	
59.	Section 70 – Insurance industry concerns	55
60.	Section 71(3A) - Loss from House Property	55
61.	Section 72A - Carry forward of losses in case of amalgamation or merger for service industry	56
62.	Section 78 – Issue of carry forward and set off of losses of an LLP	56
63.	Section 79 – (a) Carry forward and set off of loss in case of eligible start-ups - Condition to be further relaxed	57
	(b) Insertion of third proviso in Section 79 - relief for change in shareholding of subsidiaries pursuant to resolution plan	58
64.	Section 79 - Carry forward and set-off of losses in certain cases	60
65.	Section 79 – Covid19 concerns	60
CHAPTER VIA	DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME	
PART B	DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS	
66.	Section 80-IBA – Need to prescribe a form/certificate	62
67.	Section 80-IBA - Incentive to affordable housing	62
68.	Section 80C – Various suggestions	63
69.	Section 80C – Other than Life Insurance Premium payments	64
70.	Section 80CCC – Enhancements of limit	65
71.	Section 80DDB - Rule 11DD - Insert COVID-19 as eligible disease	65
72.	Section 80EEA - Tax incentive for affordable housing	66
73.	Section 80EEB- Tax incentive for electric vehicles/Deduction in respect of purchase of electric vehicle	71
74.	Section 80G – Request to reconsider cap of 10%	72
PART C	DEDUCTIONS IN RESPECT OF CERTAIN INCOMES	
75.	Section 80PA – Applicability of MAT	73
76.	Deduction in respect of interest on deposits in savings account - Section 80TTA	74
77.	Section 80TTB – Deduction in respect of interest on deposits in case of senior citizens – Request to extend the benefit by including interest on National Savings Certificate	75



The Institute of Chartered Accountants of India

	within the ambit of section 80TTB	
78.	Section 80U – Consequential amendments required due to the enactment of ‘The Rights of Persons with Disabilities Act, 2016’ w.e.f. 28.12.2016	75
CHAPTER X	SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX	
79.	Domestic Transfer Pricing [DTP] – Sections 92, 92BA, 92C, 92CA, 92D & 92E (a) Arm’s Length Price vs Ordinary Profits	78
	(b) Advance Pricing Agreements	78
	(c) Documentation Requirements	78
CHAPTER XII	DETERMINATION OF TAX IN SPECIAL CASES	
80.	Section 115BAB(2)(b) -scope may be enlarged	80
81.	Section 115BAC – Mediclaim expenditure u/s 80D may be allowed/included and other concerns	80
82.	Section 115BBDA - Request to recommend suitable amendments when applying provisions of section 115BBDA and section 115JC of the Income-tax Act, 1961 simultaneously	84
83.	Section 115BBF – Rationalizing patent tax regime	86
84.	Section 115BBE – Need to reconsider the high rate of tax	87
85.	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	87
CHAPTER XII-B	SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES	
86.	Section 115JB - Insertion of clause (iih) in Explanation 1 to section 115JB - Downward adjustment of aggregate brought forward losses and depreciation u/s 115JB	90
87.	Section 115JB -Minimum Alternate tax	91
88.	Section 115JB – MAT implications for Ind AS compliant companies	92
CHAPTER XII-D	SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES	
89.	Section 115-O - Inclusion of loans within section 2(22)(e)	94
CHAPTER XII-DA	SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES	
90.	Section 115QA – Effect on foreign investments	98
CHAPTER XII-EB	SPECIAL PROVISIONS RELATING TO TAX ON ACCREDITED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS	
91.	a) Recovery provisions on trustees etc. – Section 115TD(5)	101
	b) Section 115TD(5) - Period of 14 days insufficient	101
CHAPTER XIV	PROCEDURE FOR ASSESSMENT	
92.	Section 139 – Due date to file ITR for assesseees required to file transfer pricing report u/s 92E to be extended to 31st December of the AY in line with the extension of due date for assesseees liable to tax audit to 31st October of the AY	104
93.	Seventh proviso to section 139(1) – Mandatory furnishing of return of income - Deposit amount exceeding one crore rupees in current account may be made applicable to all types of accounts	104
94.	Explanation 2 to section 139(1) – Need to synchronize due date of partner with that of	106



The Institute of Chartered Accountants of India

	Firm liable for domestic transfer pricing provisions	
95.	Section 139(4) – A reasonable penalty may be imposed for belated filing after expiry of time allowed	106
96.	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)	107
97.	Section 139 – Insertion of details of exempt income in the acknowledgement of ITR Forms	108
98.	Section 139A – Amendment / surrender of PAN	108
99.	Section 139A – Need for certain persons to mandatorily have PAN	109
100.	Section 142A - Estimation of value of asset by Valuation Officer	109
101.	Section 145 - Taxation of retentions money/margin money in the hands of contractors / sub-contractors	110
102.	Section 148 - Reasons for reopening to be sent along with notice for reopening of assessment	111
103.	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	111
104.	Section 159 - Hardship in obtaining 'Legal Heir Certificate' for the purpose of registering deceased assessee's legal heir as representative assessee for e-filing of tax returns of a deceased assessee	112
105.	Section 171 - Assessment after partition of a Hindu undivided family	114
CHAPTER-XVII	COLLECTION AND RECOVERY OF TAX	
PART B	DEDUCTION AT SOURCE	
106.	Section 192 – Need for clarity on TDS on family pension	116
107.	Section 193 - No tax withholding on 'interest on securities' earned by a business trust defined as per section 10(23FC)	116
108.	Section 194A- TDS on compensation received under Motor Vehicles Act	117
109.	Section 194A – Need to raise threshold limit from 5,000 to Rs 10,000	120
110.	Section 194A - Interest payments to NBFC	120
111.	SECTION 194C – Increase in prescribed limit	121
112.	Section 194H – Request to increase TDS exemption limit to Rs 40,000	121
113.	Section 194-IA- Issues	123
114.	Section 194-IA – Reduction in threshold limit to Rs. 30,00,000	124
115.	Section 194J - Fees for professional or technical services	124
116.	Section 194J – Clarification for rate of TDS	125
117.	Section 194N - Practical difficulties to be faced and clarifications required regarding implementation of provision of TDS @ 2% on cash withdrawals exceeding Rs 1,00,00,000	126
118.	Section 194N - Payment of certain amounts in Cash	128
119.	Section 194-O – Practical implementation issues	129
120.	Section 194-O – Clarification w.r.t. GST	131
121.	Section 197 – Reduced rate of TDS for Joint Venture	131



The Institute of Chartered Accountants of India

122.	Section 197A - TDS on non-availability of PAN Cases	132
123.	Section 197A – Certain assesseees may be allowed benefit	132
124.	Section 197A - Rationalizing TDS applicability on Merchant Discount Rate ('MDR')	133
125.	Section 204 – Issue w.r.t. appeal filing by Principal Officer u/s 201/201A	135
126.	TDS on Recharge Vouchers	135
127.	Section 206C – Concerns arising due to inclusions in TCS provisions to be addressed	136
128.	Section 206C(1H) – certain other concerns	137
PART C	ADVANCE PAYMENT OF TAX	
129.	Section 208 -Revision of Limit of advance tax	138
PART G	LEVY OF FEE IN CERTAIN CASES	
130.	Section 234C – Interest due to MAT application	139
131.	Section 234C – Dividend Income	140
132.	Section 234E – Day wise slab	140
133.	Section 244A - Rate of Interest on Refunds	141
CHAPTER XX	APPEALS & REVISION	
134.	Section 246A – Necessary amendment required enabling filing of Appeal against penalty imposed by Assessing Officer under section 271J	143
135.	Section 254 – Condition of pre-deposit of 20% of tax etc. for granting stay by the ITAT to be reconsidered	143
CHAPTER XX-B	REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX	
136.	Section 269ST - Issues(i), (ii)	146
CHAPTER XXI	PENALTIES IMPOSABLE	
137.	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	148
	b) Penalty for under-reporting of income	148
	c) Order to specify the specific clause of under -reported or misreported income for levy of penalty under section 270A	150
	d) Mere making of a claim which is not sustainable in law would not tantamount to furnishing inaccurate particulars for attracting levy of penalty	151
138.	Section 270AA - Immunity from Imposition of penalty	151
139.	Section 271AAB - Need to simplify penal provisions	152
140.	Section 271AAB -Penalty where search has been initiated	152
141.	Section 271AAD – Penalty for fake invoice – Stringent provision to be relaxed	153
142.	Rationalization of Section 271D & 271E	155
143.	Section 271FA – Clarity required regarding appealability of penalty order	156
144.	Section 271H - Penalty for failure to furnish TDS/TCS statements	158
145.	Genuine hardship faced by tax deductors on account of provisions of section 276B of the Income-tax Act, 1961 attracting prosecution proceedings for delay in remittance of tax to the credit of the Central Government	159



The Institute of Chartered Accountants of India

146.	Section 276C - Withdrawal of cases initiated against limited companies after winding up order	161
147.	Section 276CC – Amendment w.r.t. clarification regarding inclusion of amount of advance tax paid and tax collected at source may be made applicable with retrospective effect	162
148.	Chapter XXII - Prosecution proceedings not to be imposed in case tax and interest paid	162
149.	Initiation of prosecution	163
CHAPTER XXIII	MISCELLANEOUS	
150.	Section 288 - Appearance by Authorized Representative	166
151.	Request to consider amendment in Explanation to section 288(2) pertaining to definition of 'Accountant'	166
152.	Computation of MAT profit in case of companies undergoing Corporate Insolvency Resolution Process under the Insolvency Code, 2016	171
153.	Conversion of convertible notes into shares	172
154.	Section 43CA, 50C and 56 – Allowance of variation of 10% between stamp duty value and the sale consideration – Increasing the permissible variation and need for retrospective amendment	172
155.	Exemptions – Skill Development	173
156.	Tracking the un-spent portion of capital gain deposit – Levy TDS at the time of withdrawal	174
157.	Schedule 4/Rule 8(iv) - Compulsorily mandate the one-time portability from a recognised provident fund to the NPS at the option of the employee member	174
158.	Schedule 4/Rule 8(i) – Ease of withdrawal from Recognised Provident Fund	175
159.	Reduction of Stamp Duty and Registration rates	175
160.	Capital gains tax exemption in case of merger/restructuring involving LLPs	176
161.	Taxation of ESOP in case of employees of eligible start-ups	176
162.	Rate of dividend taxation in hands of resident	177
	OTHERS	
163.	Issues arising from applicability of Companies Act, 2013 - Amalgamation	180
PART B	SUGGESTIONS FOR IMPROVING TAX ADMINISTRATION AND CITIZEN SERVICES	
164.	Section 154 - Mistake apparent from record	182
165.	Section 154/155(14) - Different Methods of accounting followed by the deductor and deductee – Rule 37BA	182
166.	Section 200 -Furnishing of TDS returns	184
167.	Give RERA effect in Income taxation	184
168.	Tax consolidation Scheme	185
169.	Consolidation of Group losses	186
170.	Carry back of losses	187
171.	Need to reduce tax rate of partnership firms in line with corporate tax rate reduction	187
172.	Reduction in rate of tax in case of Firms and LLPs engaged in the business of Infra	187



The Institute of Chartered Accountants of India

	Industry and Real Estate Sector	
173.	Rule 31 - TDS credit should be allowed solely on the basis of Form No. 26AS and procedural requirements for issuance of TDS certificates (Form No. 16 / 16A) should be dispensed with	188
174.	Reconciliation of each payment made by deductor to avoid duplication of work of TDS return	191
PART C	SUGGESTIONS PERTAINING TO INTERNATIONAL TAXATION	
175.	Provisions regarding indirect transfer of capital asset situated in India - Section 9	196
176.	Section 9(1)(i) - Benefit of non-applicability of indirect transfer provisions in case of Category I and II FPIs - Provisions for avoidance of double taxation in case of such indirect transfer provisions, where direct transfer has already been subject to tax	198
177.	Scope of Royalty Income - Section 9(1)(vi)	199
178.	Explanation 5 to Section 9(1)(vi) – e commerce services	202
179.	Tax withholding on transponder hire charges - Section 9(1)(vi) Explanation 6	204
180.	Section 9(1)(i) Explanation 6(b)	206
181.	Definition of Significant Economic Presence (SEP) for the purpose of business connection	207
182.	Introducing safeguards while applying Principal Purpose Test under the tax treaty	207
183.	Grandfathering of Principal Purpose Test application	208
184.	Disallowance for TDS defaults on payments to non-resident – Section 40(a)(i)	208
185.	Cross-border merger	208
186.	Master File Regulations	211
187.	Reporting of issuance of Share Capital Transaction in Form 3CEB	211
188.	Permissible variation available in case of Single comparable used determining the arm's length price	212
189.	Section 92C(2) and Rule 10 CA - Range concept	213
190.	Tolerance Band – Second proviso to section 92C(2)	213
191.	Mutual Agreement Procedures (MAP)	213
192.	Section 92CE - Introduction of secondary adjustment	214
193.	Advance Pricing Agreements ('APA')	218
194.	Section 94A -Special measures in respect of transactions with persons located in notified jurisdictional area	219
195.	Section 94B - Limitation of interest benefit provisions introduced – certain concerns to be addressed	219
196.	Section 95 – Applicability of GAAR to be effective from A.Y.2018-19 - Protection from applicability of GAAR should not be restricted to only investments, but may extend to all transactions upto 31.03.2017	225
197.	Section 95 - General Anti-Avoidance Rule	225
198.	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	228
199.	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	229



The Institute of Chartered Accountants of India

200.	Application for Permanent Account Number (PAN) in certain cases	229
201.	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	230
202.	Section 194LC - Income by way of interest from Indian Company	232
203.	Section 194LC and Section 206AA - Scope of concessional rate of tax on overseas borrowings	233
204.	Section 194LD - Income by way of interest on certain bonds and Government securities	235
205.	Section 195 –	235
	a) Time limit for Issuance of “general or special order	
	b) Consequential amendment required in section 204	236
	c) Applicability of Rule 37BB read with Section 195 for making remittances outside India	237
	d) Penalty for failure to furnish information or furnishing inaccurate information under Section 195	238
206.	Section 201 – Limitation period for Non-resident	238
207.	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	239
208.	TDS on interest on NRO account	240
209.	Chapter VIII of the Finance Act, 2016 - Equalisation Levy - Issues to be addressed	240
210.	Tax consolidation Scheme	241
211.	Provision for the employer to provide tax treaty benefits while calculating TDS	244

PART A

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



CHAPTER I

PRELIMINARY



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
1.	Section 2(14) – Treatment of LIP as capital asset	Any sum received under life insurance policies ('LIPs') not exempt under section 10(10D) are taxable currently. Deduction of only premium while computing the net income / loss after surrender / withdrawal of policy doesn't take care of inflation resulting in higher taxability. Issue Whether LIP can be regarded as capital asset.	<i>It is suggested that LIP be treated as a capital asset falling within the definition of "property" under section 2(14) of the Act. Indexation benefit (for premiums paid) will take care of inflationary impact - resulting in parity with other capital assets.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
2.	Section 2(42A) – Reduction in holding period in case of immovable property, being land or building or both, to qualify as long-term capital asset – Consequential amendments to be made in sections 54, 54B, 54D and 54F	The Finance Act, 2017 amended section 2(42A) so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long-term capital asset. The same is done to promote the real estate sector and to make it more attractive for investment. Issue Consequential amendments for reducing the holding period of immovable property from 3 to 2 years is required to be made in sections 54, 54B, 54D and 54F in line with the amendment in section 2(42A). At present, these sections restrict transfer of new assets purchased for 3 years.	<i>It is suggested that consequential amendments may be made in sections 54, 54B, 54D & 54F so as to enable the holding period of the new asset purchased to be reduced to 2 years from 3 years in case of land and/or building.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
3.	Section 2(42A) – Request to include all immovable properties	Section 2(42A) was last amended for land or building, while many real estate transactions take place on leaseholds, tenancies etc. To serve spirit of amendment, all immovable properties may be included to stimulate housing sector.	<i>It is suggested to amend section 2(42A) further so as to include all immovable properties within its purview.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Chapter III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
4.	Section 10(10D) – Certain issues	Currently exemption under section 10(10D) is based on premium to actual capital sum assured ratio. This results in LIP with higher premiums due to age factor, occupational / lifestyle diseases (blood pressure, diabetes, etc.), being treated as taxable. Policyholders' in absolute need of insurance cover are denied tax relief due to higher premiums in such cases. Issue I Exemptions to Life Insurance Policy. Issue II Surrender value on assignment of KIP to employee is taxed under section 17(3)(ii) of the Act and again the entire amount received under such assigned policy is taxed on maturity.	<i>(i) It is suggested that tax exemption should not be linked based on premium to sum assured ratio. Rather, all LIPs with policy term of 10 years or more should be exempt. Tax exemption based on policy term helps in medium to long term investments.</i> <i>(ii) It is suggested that taxing the same policy twice results into double taxation of KIP. Further, in any case, the maturity proceeds received on death of the assignee should be kept as tax exempt. This benefit is similar to the exemption provided in respect of LIP, where the annual premium paid does not exceeds 10% of sum assured.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
5.	Section 10(12A) – Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers under section	For A.Y. 2018-19, section 10(12A) provides for an exemption of upto 40% of the total amount payable to an employee contributing to the NPS on closure of his account or on his opting out the scheme. Further, in cases of partial withdrawal from NPS, section 10(12B) provides for exemption of upto 25% of contributions made by an employee. These	<i>It is suggested that the amendment as made in section 10(12A) may also be made in section 10(12B) thereby extending the benefit of exemption in case of partial withdrawal to non-employee subscribers as</i>



Sr. No	Section	Issue/Justification	Suggestion
	10(12A) – Similar amendment may also be made in section 10(12B)	exemptions were, however, not available to non-employee assessee contributing to NPS. The Finance Act, 2018 has extended the benefit of exemption under section 10(12A) to all assessees, in order to provide a level playing field to both employee and non-employee assessee subscribers. However, the Finance Act, 2018 does not contain a similar amendment in respect of benefit of exemption under section 10(12B), consequent to which such benefit of exemption in case of partial withdrawal continues to be restricted to employees alone. To provide equity between the employee and non-employee subscriber, similar amendment may be made in section 10(12B) to extend the benefit available thereunder to non-employee subscribers.	<i>well. The said amendment would also be in line with the intention of the legislature to provide a level playing field to both types of subscribers to NPS.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
6.	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	<i>Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of voluntary retirement, by including the words “or otherwise” in line with section 10(10AA) of the Income-tax Act, 1961.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		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.	
7.	Section 10 – Special exempt allowance to employees engaged in infra industry	More often than not, the contractors take up the projects in most remote areas and frequently switchover from one place to other. The employees engaged in Infra Industry cannot change the domicile of their family according to their place of employment. To make a visit to their home from frequently changing work site, they have to incur extra expenses towards their travelling.	<i>It is suggested that a special exempt allowance u/s 10 may be introduced for employees of Infra Industry. It may be fixed at a suitable percentage on their salary which will justify the mode of transport used by the category of employees concerned.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
8.	Section 10(23C) - Annual Receipts	Under section 10(23C)(iiiad) and (iiiiae) of Income-tax Act, it is provided that the income of University/Educational institutions/hospitals/ other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also, it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Though annual receipts have been prescribed as Rs.1 crore vide Rule 2BC of Income-tax Rules, the word "annual receipts" have not been defined in the Income-tax Act. 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	<i>It is suggested that "Annual Receipts" be clearly defined as income of the hospitals/ educational institutions arising regularly/every year but excluding value of donation received in kind by way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/educational equipment etc.</i> <i>Also, it is suggested to include a clear provision so as to calculate Receipts institution wise as well.</i> <i>Further, it may be specifically provided that donations received towards corpus by</i>



Sr. No	Section	Issue/Justification	Suggestion
		are to be excluded from the computation of "annual receipts"; (c) In certain cases where such charitable institutions receive donations in kind in the form of land, movable assets etc. whether "annual receipts" would exclude such receipts since they are not received annually.	way 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)
9.	Section 10(23C) - Rationalisation of Provisions	The 15th Proviso to Section 10(23C) states that application for obtaining approval under this section shall be made on or before 30th September of the relevant assessment year from which the exemption is sought. For example, if an institution seeks approval for Financial year 2017-18, it will have to apply up to 30th September 2018. Further, the 9th proviso to Section 10(23C) states that order granting approval or rejection shall be passed within 12 months from the end of month in which such application was received. In view of this proviso, in respect of applications received on 30th September 2018, the order has to be passed on or before 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.	It is suggested that: • Such application should be allowed to be made at any time during the financial year for which exemption is sought even if the annual receipts have not exceeded or is not expected to exceed the limit of Rs 1 crore. • Time limit for granting approval may be reduced from 12 months to "within 4 months from the end of the month in which application has been filed", so that any institution should be well aware of its status before due date of filing its income tax return. • the limit of Rs.1 crore be increased now as the same is fixed 23 years ago. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
10.	Section 10(23FB) - Tax exemption for Alternative	Earlier under Section 10(23FB) of Income-tax Act, any income of a Venture Capital Company (VCC) or Venture Capital Fund	It is suggested that section 10(23FB) be reworded as



Sr. No	Section	Issue/Justification	Suggestion
	Investment Funds – Venture Capital Funds	(VCF) set up to raise funds for investment was exempt from taxation. However, in 2007, this was amended and the scope of VCC / VCF was narrowed down to select sectors and the exemption from income tax was limited to “any income of a VC company or VC fund from investment in a venture capital undertaking”. The sectoral restriction stands removed in Union Budget, 2012 which was a welcome move. However, the tax exemption still remains limited to “any income of a VC company or VC fund from investment in a venture capital undertaking”. Keeping in mind the growing importance of VC funds in infrastructure and also in other important sectors of our economy, the previous wording of “set up to raise funds for investment” needs to be restored in place of “from investment” under Section 10(23FB). A change in the wording from “any income of a VC company or VC fund from investment” to “any income of a VC company or VC fund set up to raise funds for investment” will enable the VCC / VCF to undertake analysis / study 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.	follows: <u>“Any income of a venture capital company or venture capital fund from investment set up to raise funds for investment in a venture capital undertaking.”</u> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
11.	Section 10(32) - Income of minors - to increase exemption limits	At present income of minors included in the hands of parents is exempt to the extent of Rs.1,500/- for each minor. The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years, limit of Rs.1,500/- fixed is woefully inadequate.	<i>It is suggested that this should be raised to at least Rs. 5,000/- for each minor child.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
12.	Section 10(38) – grandfathering provisions for shares received by way of inheritance	While grandfathering as on 31 January 2018 is available for listed shares acquired prior to 1 February 2018, there is no clarity where shares are received by way of inheritance. Issue Long term capital gains on sale of listed equity issues which are acquired through gift or Will post 1 February 2018 but the original purchaser had purchased the same before 31 January 2018.	<i>It is suggested that all shares received by virtue of transactions covered under section 49 should be eligible for grandfathering under section 55(2)(ac).</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
13.	Section 11 - Restructuring of provisions regarding charitable institutions	Currently, there are different provisions applicable to charitable institutions u/s 10(23C) and section 11 to 13 of the Act. Definition of term ‘charitable purpose’ has been given in section 2(15) of the Act. There is lot of litigation going on as regards the definition of charitable purpose as well as of application of income etc. As per the existing provisions a charitable institution is permitted to accumulate its income for a period of five years and income applied for capital expenses is also allowable as deduction. In view of the fact that capital expenditure is allowed as application towards charitable purpose, it has become a general phenomenon that educational institutions, hospitals, etc. in some cases, are being run as industry and are charging high fees for the services provided by them and amount is accumulated and is spent for setting up another school, college or hospital. Accordingly, the whole purpose of the institution, being charitable, has been defeated in many cases and practically they are being run as commercial institution. In spite of amendment in the definition of the term ‘charitable purpose’ in section 2(15) of Income-tax Act, 1961 the purpose has not been served.	In order to avoid the litigation and also to create a situation that institution really works as a charitable institution, it is suggested that:- (i) The objects and purpose of an institution be examined in detail while granting registration to a charitable institution by the Commissioner of Income-tax. For this purpose, detailed guidelines as regards the charitable purpose should be there by way of notification in the rules. The Commissioner once examine and grant registration, the institution will continue to be recognised as charitable. May be for this purpose an independent authority known as a ‘Charity Commissioner’ be appointed by the Government, as it exists in certain states. The system of fresh registration and renewal introduced by the Finance Act, 2020 may not be necessary and needs reconsideration.



Sr. No	Section	Issue/Justification	Suggestion
			(ii) As at present, 15% of income should be permitted to be accumulated without any condition. Any excess over and above the same should be chargeable to tax, may be at a concessional rate of, say, 20%. Such provision will also discourage the institutions to charge higher fees for the services rendered. Accordingly, over a period of time income and expenditure of charitable institutions would by and large match and as a result real charitable purpose would be served. (iii) If any charitable institution wants to opt out of the specific provisions, an option should be available to it and in that case the institution will be chargeable to tax as a commercial concern and assessment will be made in accordance with general provisions of the Act. (iv) The restriction, as at present, that no charitable institution can carry on the business unless specific conditions provided under section 11(4A) are complied with, should be done away with. Income of a business, applied for a charitable purpose, should be considered as receipt of charitable institution. In respect



Sr. No	Section	Issue/Justification	Suggestion
			of the business separate books of account have to be maintained and the income arising from the business has to be considered as receipt/income for the purpose of charitable activities being run by the institution. (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
14.	Section 11(2) – Extension in time for compliance	Due to COVID situation, incomes set apart/accumulated earlier (for permitted period of maximum 5 years) could not be spent during March 2020 & F.Y. 2020-21, on the purposes for which they were set apart/accumulated. To enable the charitable entities to meaningfully meet their well decided & declared objectives for the charitable spending of accumulated income, the spending of which is being made impossible, & so delayed, due to COVID situation, an extension in time is duly warranted.	<i>It is suggested that the extension of two years may be granted for applying all such incomes which are already set apart/accumulated under section 11.</i> (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)
15.	Section 12(1) - Contribution received in kind without specific direction to form part of the corpus under tax net	As per current law, any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly. However, in practice any voluntary contribution received in kind (such as gold, silver, jewellery etc.) without specific direction to form part of the corpus is not recorded in books of accounts by some charitable and religious trusts.	<i>In order to bring contribution received in kind (such as gold, silver, jewellery etc.) without specific direction to form part of the corpus under tax net, it is suggested to amend section 12 so as to insert the term "either received in cash or in kind". The value shall be the market value as on date of receipt of such donation. Alternatively, details of voluntary contribution received in kind during the year should be made mandatory to upload with ITR.</i>



Sr. No	Section	Issue/Justification	Suggestion
		Some charitable and religious trusts receive voluntary contributions in the form of gold, silver, jewellery, land etc. The donation in kind received by some charitable and religious trusts is in big volume and carry high value. Many times, it is received from unknown donors. Some trusts are not maintaining proper record of it. Hence it is necessary to bring it under tax net.	(SUGGESTION FOR IMPROVING TAX COLLECTION)
16.	Section 12AA – Status of registration application	If the order for granting or refusal of application for registration of trust or institution u/s. 12A is not passed within 6 months, status of registration cannot be defined. Some judgments pronounced that it will be considered as deemed registration, while some judgments are against this view. To minimize litigation, certain amendment needs to be made in existing provisions.	<i>It is suggested to insert a proviso to section 12A/12AA such that non-disposal of application for registration u/s. 12A within prescribed period will be considered as deemed registration.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
17.	Section 12AB – Process of registration/renewal of registration be completely digital without any human intervention	The Finance Act 2020 inserted a new section 12AB providing for procedure for fresh registration after every 5 years. The intent as well as the proposed provision are welcome as these measures will keep in check the activities of exempt entities after every 5 years. However, in order for its successful implementation and to avoid any malpractices and/or corruption in case of fresh registration after every 5 years, the process needs to be completely digitised free from any human intervention.	<i>It is suggested that process of seeking fresh registration after every 5 years be completely IT based/digitized so as to keep human intervention at the minimal.</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
18.	Deduction to salaried assesses - Payment for notice period	As per the prevalent norm, the employees are required to serve notice within the stipulated time before leaving the organisation. The notice period, however, varies from organisation to organisation. For example, in an organisation the notice period may be 90 days, or an employee has to pay 90 days salary amount to the organisation as an employee may get a better job opportunity in another organisation wherein he is required to join within 30 days. Accordingly, the employee has to give 30 days' notice in old organisation and pay for short notice of 60 days. Generally, the contract of service also provides that in case the employer is not satisfied with the performance of the employee he may terminate his services by giving a notice of 30 days or 30 days salary. In case the employer suspends the employee with immediate effect he pays an amount equivalent to 30 days salary and claims deduction thereof. Such amount becomes taxable in the hands of the employee. However, in case the employee is required to pay notice period salary, no deduction of such amount paid is allowed to him. If the new employer agrees to bear the brunt of notice period pay, say of 60 days in above example, the said amount will be included in the total income of the employee and tax will be deducted thereon even if such income belonged to the ex-employer and is taxable in his hands. Thus, in effect the assessee will be liable to pay tax on 14 months' salary i.e. salary for more than 12 months without any deduction available to him.	<i>It is suggested that said anomaly may be resolved and appropriate provisions be inserted so that income from notice period pay is chargeable in the hands of ex-employer and deduction of the amount of notice period pay paid be made available to the employee as he has not effectively received that income (unless reimbursed by the new employer).</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
19.	Section 17 - Expenses incurred due to COVID19/lockdown/Work from	Due to lockdown, organisation have implemented work from home. Since the employees may not have proper set up at home for carrying out official duties, the employer	<i>It is suggested that expenses incurred towards furniture / other set-up cost may be specifically exempted.</i>



Sr. No	Section	Issue/Justification	Suggestion
	home	provides necessary set up so that the employees can execute their work efficiently and effectively. Issue Provision of desk, chairs and other set up at employees' residence in light of work from home could be taxed as perquisite in the hands of the employees	(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
20.	Section 23 - Deduction of interest from house property	As per section 23, pre EMI interest is allowed for deduction in five equal installments from the year of completion of construction. Thus, while on the one hand, buyer is suffering from delay in construction and on the other hand, interest paid by him is not allowed as deduction.	<i>It is suggested to remove the said hardship by allowing deduction of pre EMI interest in the year of payment of interest u/s 23.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
21.	Section 23(1)(c) – Vacant house property	Vacant property even if given on rent in the earlier year is being taxed as deemed let out and a notional income is being attributed to such a property. The increase in the number of self-occupied properties has been increased to two to encourage the real estate industry. However, the restriction on the number of self-occupied properties to two may be relooked and revisited. No prudent business person will invest in a property and not seek a return on his/her investment unless it is being used for self-occupation either when on business or for leisure .It should be the prerogative of the assessee to decide the number of properties he can hold.	<i>The provisions of Section 23(1)(c) need to be elaborated and an explanation inserted to avoid unnecessary litigation. Even though the section is very clear, the department continues to tax a property that is lying vacant even though it was rented out in the previous year.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
22.	Section 23(5) - Tax on unsold properties held as stock in trade	Section 23(5) provides that in respect of unsold property that is held as stock-in-trade after a prescribed period, it is taxed on notional rental income basis. Mainly, it attracts builders and developers who are struggling with various	<i>It is suggested:</i> <i>(a) to amend section 71(3A) so as to exclude provisions of section 23(5).</i>



Sr. No	Section	Issue/Justification	Suggestion
		practical issues inclusive of having a large unsold property. Section 23(5) providing for deemed rental income and making it taxable after two years of property construction appears to be harsh to genuine developers who are unable to dispose off their stock in the slump. Therefore, once a builder demonstrates that he has not been able to sell despite genuine efforts to sell, the deeming provisions may not be made applicable. In many cases, the builders pay interest on funds borrowed for construction. Further, Section 71(3A) provides for ceiling of Rs. 2 lakhs for set off of loss under the head house property against any other head of income. Combined effect of application of sections 23(5) and 71(3A) is proving double sufferings for the builders/ developers.	<i>(b) that Real Estate business entities be exempted from the provisions of sections 23(5) and 71(3A) for atleast five years.</i> <i>(c) that for the purpose of section 54 and 54F, the time limit for construction of a house may be increased from 3 years to 5 years. If the funds are regularly paid by the buyer and construction of the house is in progress, the delay beyond 5 years may also be allowed.</i> <i>(d) that provisions of section 72A allowing set off of unabsorbed losses and unabsorbed depreciation be allowed to real estate sector also to enable consolidations and mergers.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



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

Sr. No	Section	Issue/Justification	Suggestion
23.	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.	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. (SUGGESTION FOR IMPROVING TAX COLLECTION)
24.	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.	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. (SUGGESTION FOR IMPROVING TAX COLLECTION)
25.	Section 28(va) – Taxability of non-compete fees in the hands of payer	Section 28(va) provides for the taxability of amount received as non-compete fees in the hands of recipient. However, its taxability in the hands of payer is not yet defined and amenable to interpretations. In fact, there are differing	Considering the differing judgements by various courts on the issue of payment of non-compete fees, it is suggested that



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



Sr. No	Section	Issue/Justification	Suggestion
		licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the de-merged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them. The following issues may be considered for appropriate amendment in the law : (a) An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act. (b) As per the current provisions of proviso to section 32 the depreciation can be claimed on the basis of proportionate number of days for which the assets were used by the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be. Due to practical and administrative	<i>basis of proportionate number of days by the transferor and the transferee company in case of slump sale also considering the proviso to section 32 read with section 170 of the Act.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>



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



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



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



Sr. No	Section	Issue/Justification	Suggestion
	authorized capital	deduction. After a company is incorporated with a minimum paid up capital (for which there is no minimum limit now), and it wishes to increase its authorised capital, the company is required to pay registration fee to Registrar of Companies. Fee on incorporation of a company is allowed as per specified limits in 5 installments u/s 35D, however amount paid for increase in authorized capital is not allowed as deduction at all, though the amount is paid to government as a fee.	companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal installments u/s 35D. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
31.	Due date for crediting the contribution of employees to the respective fund – Section 36(1)(va) read with Section 2(24)(x)	Section 2(24)(x) of the Act, inter alia defines “Income”, to include any sum received by the employer from its employees’ as contribution towards certain specified funds. However, deduction for such income are available under section 36(1)(va), provided that the contributions collected by the employer are credited to the respective fund within the due date specified under the relevant legislation of the fund. The employee’s contribution credited to the employees account in the relevant fund after the due date specified under section 36(1)(va) are disallowed to the employer. Further, any payments made by the employer after the due date is also NOT allowed as a deduction in the year of payment. This causes undue hardship to the assessee especially during the economic turbulence. Further, the Employer’s contribution made after the due date specified under the relevant social security legislation but deposited within the due date of filing return of income are allowed under the Act by virtue of Section 43B. It may be noted that the statutory laws under the respective contribution schemes	It is suggested that the due date defined under Explanation to Section 36(1)(va) should be amended and accordingly the due date shall mean the due date for filing return of income under section 139(1), thereby bringing it at par with the due date specified for the Employer’s contribution under Section 43B of the Act. It may also be kept in mind that delay of few days should not debar to claim the actual expenditure under Income-tax law as due interest is already charged under relevant laws. (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



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



Sr. No	Section	Issue/Justification	Suggestion
			(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
33.	Section 40(ba) – Amendment w.r.t. taxation of consortiums/J Vs/AOPs	Currently, substantial number of real estate transactions are structured as JVs. Some of these joint ventures become taxable as AOPs. While in case of a partnership, u/s. 40(b), remuneration, interest to partners are allowable deductions subject to prescribed ceilings, in cases of AOPs, section 40(ba) does not allow such deductions. In practice, in many cases, the JV partners provide specific services and specialised services. Therefore, such deduction may be allowed subject to fair market valuation of such services.	<i>It is suggested to amend section 40(ba) to allow remuneration, interest to JV partners subject to provisions of section 40A(2) so as to protect revenue's interest.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
34.	Section 40(b)(v) – Raise in allowable expenses in the form of remuneration to working partner	Currently, the remuneration to working partners is allowed at Rs. 1,50,000 or 90 percent of book profits whichever is more for first Rs. 3,00,000 of book profits and at 60 percent of remaining book profits which is not justified. Raising the aforesaid limit will have no tax effect as it would be just appropriation of profits. Further, there would be timing difference from the view point of tax.	<i>It is suggested that limit for allowable remuneration for each of the working partner be changed at the rate of Rs. 1,80,000 per annum per partner or 90 percent of book profits whichever is more for first Rs. 10,00,000 of book profits and 75 percent of the remaining book profits.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
35.	Explanation 5 to Section 43(1) – “building” to be replaced by	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	<i>In line with the other explanations to section 43(1), it is suggested that the term “Assets” be used</i>



Sr. No	Section	Issue/Justification	Suggestion
	"assets"	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>instead of the term "building" in Explanation 5 to section 43(1).</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
36.	Section 43CA - Request to reconsider applicability on Real Estate industry	In any Industry, at times there are situations when the producer finds it difficult to sell his/her product. Under this situation, the business sense motivates the producer to sell the product at minimum profit margin or at no profit no loss. At times, this also doesn't work and then he/she thinks to sell the product even at loss so that liquidity is maintained. However, section 43CA doesn't allow the Real Estate Developers to sell their product at loss as they will have to cough up further money in the form of Tax on Deemed Income. The Real Estate Developers are put at huge disadvantage vis a vis other manufacturers of different items – the Government collects tax even on their losses whereas the others have full freedom to dispose of their products at whatever reduced prices they think fit. Builders who are forced to sell the flats at a lower price, due to the prevailing market situation, is already at a loss, as the demand is stable at almost all Cities. The above provision stipulates the builder to sell the flats at a fixed amount and if not	<i>It is suggested to reconsider provisions of section 43CA especially on real estate industry. Further, allowable limit of deviation of 5% may be increased to deviation of 30% for real estate sector.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		sold at the fixed amount or above, will have to compensate the Government by paying tax on the difference amount between the sale price and the fixed price stipulated by the Government. This will result the builder to pay Tax even when he incurred loss.	
37.	Section 44AB – Steep increase in threshold limit from Rs 1 crore to Rs 5 crore subject to conditions specified for person carrying on business – Certain concerns/issues to be addressed	The resolve of the current government in respect of ease of doing business especially for small and medium enterprises and moving towards digital economy is appreciable. Towards this end, the threshold limit under section 44AB is increased from Rs 1 crore to Rs 5 crore in a case where cash receipt is not more than 5% of total receipt or cash payment is not more than 5% of total payment. This would, no doubt, reduce the compliance burden of SMEs and MSMEs. However, we would like to point out certain concerns/issues which merit consideration from a revenue augmentation and tax collection stand point. The steep increase in the threshold for tax audit from Rs.1 crore to Rs.5 crore may pose concerns relating to revenue leakage especially in the current faceless assessment regime. Since the time tax audit was first introduced in 1984, the gross tax collections have risen leaps and bounds (it was around approx. 3 or 4 thousand crores in 1984 and now it around Rs 13.5 lakh crores); and tax audit has contributed significantly to such increase. The particulars required to be filled in the various clauses in Form 3CD facilitates the Assessing Officers in carrying out and completing the assessment. Further, considering the thrust on faceless assessments, a tax audit is in fact all the more important now. It will help the tax department get information from the tax	It is suggested that: (a) threshold limit of Rs 5 crore may be reconsidered keeping in mind the fact the current tax audit report format requires reporting of various disallowances and compliances as stated above. In case the threshold is so increased, tax department has to devise ways and means for identification of various disallowances and non-compliances in the current scenario of electronic assessments. (b) Clarification be issued, or necessary legislative amendments be made regarding the receipts and payments that need to be considered for the purposes of calculation of 5% of cash payment/receipt eg whether withdrawal of cash from bank (vice versa) or



Sr. No	Section	Issue/Justification	Suggestion
		audit. Tax audit by chartered accountants have compelled assesseees to make suo-moto additions on account of various disallowances like payment of taxes, bonus, interest, etc. u/s 43B, disallowances due to non-deduction of tax (TDS) u/s 40(a)(i)/(ia), various disallowances u/s 40A, payments of cash exceeding Rs. 10000/- per person per day u/s 40A(3), etc. It also provides information on TDS/TCS compliances, non-business expenditures, ICDS Compliances, Form 61A / 61 compliances, allowable deductions under chapter VIA, Receipts / payments in violation of sections 269SS / 269ST / 269T, comparable ratios, and many more. Thus, in effect, the tax audit report is the first stage verification by the chartered accountant of the compliances under the Income-tax Act, 1961. He certifies that the information given in the said Form are true and correct, based on the documents examined by him. Such certification by the chartered accountant facilitates the Assessing Officer to carry out the assessment expeditiously. Although safeguards have been provided in the form of thresholds, namely, applicability of enhanced limits only in cases where cash receipt is not more than 5% of total receipt and cash payment is not more than 5% of total payment, however, in the absence of tax audit, verification of this compliance would be directly on the income tax department. Further, the specific inclusions in cash receipts and cash payments need to be clarified. Also, assesseees excluded from tax audit	<i>maturity/creating of FDRs/loans to be counted as receipts/payments; whether only business expenditure to be considered or all payments. Further, since the onus may be put on the concerned assessee to furnish proof of compliance of the conditions of cash receipts and cash payments being less than 5% of total receipts and total payments, respectively, a suitable mechanism may be provided for ease of calculation of such limits.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		on account of increase in threshold may not be able to correctly compute their income from business by providing for the disallowances suo-moto. They are also not covered within the presumptive tax provisions under section 44AD, since the threshold for the same continues to be Rs.2 crore. Penalty for non-reporting is steep considering the proposed section 271AAD and other penal provisions like section 270A under the Income-tax law. Small businesses may not be able to report not because they want to evade tax but due to the ignorance of such provisions. This importance of tax audit, therefore, cannot be undermined as a mere compliance which is viewed as burdensome, without appreciating its contribution to the exchequer.	



Sr. No	Section	Issue/Justification	Suggestion
38.	Section 44AB – Provision to allow revision of tax audit report	We wish to inform that recently, UDIN has been made mandatory by the ICAI for CAs/members to upload any report / certificate under the Income-tax Act, 1961. If UDIN not uploaded within 15 days, the Form (including tax audit report) would become invalid There could be a few occasions, where there is a clerical error in a report, which comes to the notice after few months of filing. Currently the system allows to revise the filed audit report, but in this case, a new report is uploaded and new UDIN is to be generated. There are provisions in the Income-tax Act to revise ITR as well as TDS / TCS Returns, for which new ITR or TDS / TCS return is not to be filed but the original one can be amended through revising the same In this background, a similar provision is required to be brought for tax audit reports (Form CA/3CB/3CD) so that in case of clerical error (where turnover / profit/ balance sheet, etc are not effected), a provision is brought in the Income-tax Act to revise such reports, with same UDIN, so that there is no violation / delay reported to file the same within due time.	<i>It is suggested that section 44AB and other related provisions be amended so that tax audit report (Form 3CA/3CB/3CD) may be revised for minor clerical errors just like there is a similar provision to revise ITR forms/TDS/TCS returns under the Income-tax Act, 1961.</i> (SUGGESTION FOR IMPROVING TAX COLLECTION)



Sr. No	Section	Issue/Justification	Suggestion
39.	Section 44AB - Applicability of audit in specific case	It is mentioned in section 44AB(e) that every person carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year get his accounts audited by chartered accountant. Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year. Hence there is confusion about audit of business of a person having turnover less than one crores and who declares profit less than eight percent. Section 44AB(a) specifies to get accounts audited, if the person has turnover more than Rs.1 Crore/Rs.5 Crore. Section 44AB(e) is applicable to the person to whom section 44AD(4) are applicable. As per section 44AD(4), if the person opt outs of section 44AD, they cannot obtain benefit of this provision for next 5 assessment years. But there is no reference in section 44AB(e) about the person, who has never declared profit on presumptive basis and has turnover less than 1 Crore and profit less than 8%/6%. Hence the clarification about applicability of audit for such entity is needed.	<i>It is suggested that a clarification may be inserted in section 44AB regarding applicability of section 44AB(e) to the person having turnover from business less than Rs.1 Crore and declares profit less than eight/six percent and have never exercised option to declare profit on presumptive basis as mentioned u/s 44AD(4).</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
40.	Section 44AD - Monetary limit for presumptive basis	Explanation to the Section 44AD defines “eligible business”. It means total turnover or gross receipts does not exceed an amount of Rs. 2.00 crores. 6% is deemed to be the profit on total turnover or gross receipts if receipts are through prescribed banking channels. Some of the contractors are executing works for various Government departments and Private agencies. Most of the payments are received through proper banking channels.	<i>It is suggested that due to the growth of economic activity and the volume of business, the rate of 6% may be reduced to 5% for certain contractors and turnover ceiling may be increased to Rs. 5.00 crores for Infra Industry.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
41.	Section 44AD & section 44ADA – Remuneration and interest to partners	Section 44AD & 44ADA covers provisions of presumptive taxation. In case of firms, payment to partners like interest and salary is now not allowed against the presumptive taxation which was allowed earlier. However, other presumptive taxation provision i.e. section 44AE still allows the payment to partners out of presumptive taxation income. This creates disparity, and hence payment to partners should be allowed against all presumptive taxation income.	<i>It is suggested that payment to partners in nature of salary and interest may be allowed as deduction from presumptive incomes under section 44AD and 44ADA.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
42.	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 ‘specified professionals’, agency business and business in respect of which the earnings are in the form of commission or brokerage.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
43.	Benefit of presumptive taxation to LLP - Section 44AD	Section 44AD relating to presumptive taxation applies only to businesses run by residents Individual, HUF and Firms excluding LLP. Tax on presumptive basis should be	<i>The benefit of section 44AD should also be made available to LLP.</i> (SUGGESTION FOR IMPROVING TAX



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



The Institute of Chartered Accountants of India

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



PART E-CAPITAL GAINS

Sr. No	Section	Issue/Justification	Suggestion
45.	Section 45(5A) - Taxation of joint development agreements (JDAs)	Currently, relaxation is granted to individuals and HUFs. In towns and cities, due to land availability being scarce, more developments are happening through vertical expansions via JDAs. Tax on most JDAs are litigated w.r.t. time of taxation and/or value for taxation. While welcoming relaxations by the Finance Act 2017, the equity lies in favour of all joint developments, for capital gains as well as for stock in trade and for all types of assesseees. This will encourage real estate joint developments. The new section incorporates provisions of section 50C, but only partly with the result that relief provisions to assesseees aggrieved against higher stamp valuation are not applied. While holding constitutional validity of section 50C the courts have also taken cognisance of relief remedies built in the said section. For capital gains <i>inter alia</i> from JDAs, the exemption provisions are contained in section 54, 54F, 54EC, 54EE. However, the time limits in the said sections have not been extended w.r.t. Section 45(5A).	(a) It is suggested to extend scope of section 45(5A) to all assesseees and to transfers of capital assets as well as non-capital assets. Further, provisions of section 50C may be made fully applicable to section 45(5A). Also, time limits of section 54, 54F, 54EC, 54EE may be extended in alignment with section 45(5A). (b) Section 45(5A) deals with registered agreements only. However, the judgements on transfer include registered as well as non registered documents as transfers. Therefore, it is suggested to provide statutory provisions about unregistered development agreements also. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
46.	Limited Liability Partnership (LLP) - (a) Section 47	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,	New clauses may be inserted in section 47 to provide for: (i) Consequent exemption in respect of transfer of shares by the resident shareholders



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



Sr. No	Section	Issue/Justification	Suggestion
		should also be exempt under section 47. Business reorganization may be defined to mean the reorganization of business, otherwise than by way of amalgamation or demerger of foreign companies.	
	(b) Consequential amendment required in section 47(xiiib)	The existing section 47(xiiib) provides that no capital gains tax is payable on conversion of a private limited or unlisted public company into LLP subject to certain conditions. Proviso (e) states that this provision will not apply if the total sales, turnover or gross receipts in the business of any of the three preceding years exceed Rs. 60 lakhs. Since this was an amendment to facilitate conversion of private limited companies and unlisted companies into LLPs, ideally, there should be no restriction on the turnover to avail the benefit of section 47(xiiib). It may also be noted that the parent Act i.e. Limited Liability Partnership Act 2008, allows this conversion without any such restrictions.	Many companies are now converting themselves to LLP. With a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit under section 47(xiiib) or alternatively, the limit of sixty Lacs rupees should be substantially enhanced or the condition of the turnover should be deleted. (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
	(c) Section 47(xiiib) - Conversion of company into LLP - Clarification required relating to additional condition	LLP is a preferred form of organization for smooth conduct of business. Accordingly, section 47(xiiib) provides for an exemption enabling smooth conversion, subject to compliance with the conditions. There was a case for making the exemption more liberal by relaxing the turnover limit which is one of the present conditions. However, conversion will become all the more difficult as a	1. In view of the aforesaid, it is suggested that the condition of asset base being less than Rs. 5 crores be rationalized and may be increased to Rs 10 crore. 2. Also, the scope of the term 'value of total assets as appearing in the books of accounts' be clarified to provide certainty and reduce litigation.



Sr. No	Section	Issue/Justification	Suggestion
		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.	3. Another alternative that could be considered is that on conversion, the assessee pays tax @ 15% subject to compliance of only sub-clauses (a), (b) and (c). (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
47.	Section 47 – Request to include family settlement in the exceptions	In this regard, majority of court rulings are in one direction only i.e. family settlement does not attract capital gains.	It is suggested that family settlement is also included u/s 47 so as to avoid unnecessary litigations. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
48.	Sections 47(x) & (xa) and 49(2A) – Capital Gain on Conversion of Foreign Currency Exchangeable	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	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



Sr. No	Section	Issue/Justification	Suggestion
	Bonds (FCEB) and other Bonds & Debentures	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).	date of allotment of shares. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
49.	Section 54 - Capital gain on sale of property used for residence	Currently, capital gain arises from the transfer of capital asset, being buildings or land appurtenant thereto, and being a residential house, is exempt from tax if the assessee invest in one residential property as prescribed u/s 54.	In order to encourage the housing sector and meet the shortage of housing, it is suggested that the restriction on investment in one residential house in India u/s 54 may be broadened to more than one house. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
50.	Section 54/54F – Streamlining and capital gain exemption for investment	Section 54 and 54F provides tax exemption for investment into "a" residential house. Finance (No. 2) Act, 2014 replaced "a residential house" with "one residential house". Same litigations continue even after the amendment made e.g. 4 flats can comprise in "a house" as well as "one house". Further, section 54 and 54F are benevolent sections. The majority of the judgements have come in favour of the assessee. However, so many litigations go on endlessly on issues like allotment letter, purchase in joint names including a family member, construction or	It is suggested that section 54 and 54F may be amended by enabling CBDT to prescribe guidelines w.r.t. "one" residential house. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		purchase, so on. It is necessary to take cognisance of spirit of law and the decided case laws and to make the sections more clarificatory and positive so that the litigations can be avoided. There is a need to expand the time limits under these sections so that the assessee gets flexibility to invest.	
51.	Section 54EC - Time Limit for investment in specified bonds	a) Time limit for investment in specified bonds is presently 6 months from the date of transfer. 1. In many cases, assessee is not aware about exemption provision and comes to know about it only when he approaches his/her tax consultant at the time of filling of ITR. By this time, 6 months period is already over and thus the assessee inadvertently lose the benefit of exemption. 2. Present time limit expires exactly at 6 months from the date of transfer. Due to this, even an otherwise knowledgeable assessee is also forced to be very cautious about exact date and sometimes he may miss it unintentionally. 3. Bringing the time limit upto the due date of filling of ITR shall also bring parity with section 54/54B/54F etc. where assessee is permitted to deposit the money in Capital Gains Account upto the due date of filing of ITR. In fact, assessee would be in a better position to take a call as to which exemption option is better suited for him. 4. In number of transactions,	<i>a) It is suggested to amend section 54EC so that time limit for investment in specified bonds may be allowed upto the due date of filing of ITR.</i> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



Sr. No	Section	Issue/Justification	Suggestion
		there is some difference in dates of actual handing over of possession, submission of documents for registration of transfer, actual date of registration and even a subsequent modification of registered document due to demand of additional stamp duty. All these dates, though may fall in the same year but still may differ from each other, creating an unnecessary dispute regarding actual date of transfer and thereby time limit of 6 months. (Case of Anil Dulichand Jain V. ACIT, ITAT Mumbai ITA No. 4922/MUM/2016 is a good example of this). If the date of investment in specified bonds is made upto the due date of filling of ITR, such disputes can be saved.	
		(b) Capital gains exemption on investment in Specified Bonds during the financial year In furtherance of the existing proviso to section 54EC, a new proviso has been inserted to clarify that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year does not exceed fifty lakh rupees. The change is proposed to plug the revenue leakage and to clarify the real intent of the law. Since, the new proviso is in furtherance of the existing proviso; it may cause hardship in genuine cases	(b) Considering the fact that the new proviso takes care of the true intent of the law, and appears to be contrary to the existing proviso, thereby causing hardship to the genuine taxpayers, it is suggested that the act be amended to substitute the first proviso with the newly inserted proviso. Further, considering the inflationary conditions in the economy, it is further suggested that the said limit of Rs.50 Lakhs may be raised to Rs. 1 crore. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		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.	
52.	Section 55(2)(ac) – Clarification required to determine the cost of acquisition in case of Merger/Demerger etc.	Background: The Finance Act, 2018 has introduced section 55(2)(ac) which states that cost of acquisition in relation to a long term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of business trust for the purpose of calculating tax payable u/s 112A shall be as under: Cost of acquisition for the assets acquired before 1st February 2018, shall be higher of the following: (i) The actual cost of acquisition of such asset, and (ii) The lower of: (a) the fair market value of such assets as on 31st January 2018; and (b) the full value of consideration received or accruing as a result of the transfer of the capital	<i>It is suggested to bring clarity in determining the cost of acquisition in case of merger/demerger etc. u/s 55(2)(ac) by amending the said section or by issue of a clarification.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>



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



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



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



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



PART F-INCOME FROM OTHER SOURCES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
54.	Definition of the term relative - Explanation to Section 56(2)(vii)	Under the existing provisions of section 56(2)(vii), any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed as income and is taxed under the head 'Income from other sources'. However, in case of any individual, receipts from specified relatives are excluded from the purview and hence, are not taxable. The Explanation to section 56(2)(vii) was amended by the Finance Act, 2012 so as to provide that any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation. The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 are attracted in respect of income from any sum of money or value of assets transferred to a non-relative. Once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient, the income from such assets should not be subject to the clubbing provisions contained in Chapter V. Further, it may be noted that, in relation to an "individual", the term relative, as it stands at present, does not include nieces and nephews. This may not be the legislative intent as they also form part of the close circle of relatives and accordingly have been considered as "relative" in the Direct Taxes Code Bill, 2010 and 2013.	Suggestions: (i) <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). Also, maternal grandparents may be included in the definition of relatives.</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)
55.	Section 56(2)(x) – Clarification w.r.t. issue of shares	As per the Section 56(2)(x), if any person receives any property on or after 1 April 2017, without consideration or for consideration which is less than the aggregate fair market value by an amount exceeding Rs 50,000, the difference shall be taxable under the head 'Income from	<i>A suitable clarification may be issued that section 56(2)(x) is applicable only for transfer of shares and not for issue of shares.</i>



Sr. No	Section	Issue/Justification	Suggestion
		Other Sources' in the hands of the recipient. The intent of legislation is to bring within ambit of taxation instances of 'transfer' for inadequate consideration and not 'issue' of shares. This section has replaced the erstwhile section 56(2)(viiia) which was applicable only for transfer of shares as was mentioned in Explanatory Memorandum to Finance Bill, 2010.	(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
56.	Section 56(2)(x) – Certain exceptions to be provided w.r.t. conversion	Section 56(2)(x) contains provisions related to charging of income to tax where a person receives any money, immovable property or property other than immovable property without consideration or with inadequate consideration. 4th Proviso to section 56(2)(x) provides the cases to which this clause would not apply. Sub-clause (IX) to 4th Proviso to section 56(2)(x) provides certain transactions not regarded as transfer to which this section would not be applicable. Certain transactions, seems to be missed out even though covered u/s 47 specially related to conversions, where even though they are not regarded as transfer and Capital Gain would not be attracted but if, it includes Immovable Property or property other than immovable property (eg shares), they could be covered u/s 56(2)(x). These include: - Clause (xiii) – conversion of firm into company - Clause (xiiib) – conversion of company into LLP - Clause (xiv) – conversion of sole proprietorship into company. Further, it may also be considered to exclude Donations and Corpus Donations to Trusts as otherwise the purpose of Exemption u/s 10 and 11 is wiped off.	<i>It is suggested that sub-clause (IX) of 4th Proviso to section 56(2)(x) may be amended to include following clauses of section 47</i> • (xiii) • (xiiib) • (xiv) <i>Further, it is suggested to issue a suitable clarification that may be inserted in section 56(2)(x) so as to exclude the Donations and Donations to Corpus of the Trusts, whether registered or not.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
57.	Section 56(2)(x) – Certain other concerns to be addressed	Section 56(2)(x) is an anti-abuse provision intending to curb tax avoidance. It should not be levied where clearly there is no tax avoidance case. Issue I Section 56(2)(x) may get attracted to genuine transaction not leading to any tax avoidance. Issue II CBDT vide its Notification No. 40/2020 dated June 29, 2020 introduced Rule 11UAC of the Income-tax Rules, 1962 to prescribe the following class of persons for exclusion from the provisions of section 56(2)(x): - any immovable property, being land or building or both, received by a resident of an unauthorised colony in Delhi, where the Central Government by notification regularised the transaction of such immovable property based on certain documents; - unquoted shares of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder where the shares are received pursuant to a resolution plan approved by the Tribunal; - equity shares of Yes Bank received by any investor or investor pursuant to the Yes Bank Limited Reconstruction Scheme, 2020. Owing to the exceptional circumstances created by the COVID 19 pandemic, and the consequential impact on the real estate sector, it is likely that taxpayers may resort to 'stressed sale' of immovable property in order to generate funds or mobilise blocked capital. Exceptions to be prescribed for Sale of	<i>(i) It is suggested that the following transactions should be specifically excluded from the ambit of section 56(2)(x):</i> - Buyback of shares - Slump sale - Issue of shares under ESOP - Rights issue - Conversion of preference shares/debentures. <i>(ii) It is suggested that a similar prescription be made for stressed sale of assets, since the value of assets have significantly declined due to the ongoing pandemic. This benefit could be provided vide the following mechanisms:</i> <i>a. Introducing a form for applications which can be made by the sellers to the tax authorities, highlighting inter- alia, the details of the asset to be sold and the reason for sale of the asset at a price below fair market value.</i> <i>Prescribing a higher tolerance range wherein variation in the consideration received as compared to the stamp duty value or fair</i>



Sr. No	Section	Issue/Justification	Suggestion
		Stressed Assets due to the COVID 19 pandemic.	<i>market value will be acceptable.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
58.	Section 57 – Removal of restriction of deduction of interest expense from dividend income upto 20% of such dividend income	The Finance Act 2020 has provided to abolish the dividend distribution tax regime. Consequently, exemption of such income in the hands of the shareholders and unitholders is removed. Hence, such income would become taxable in the hands of the shareholders and unit holders. Accordingly, section 57 is amended to provide that no deduction shall be allowed from dividend income, or income in respect of units of mutual fund or specified company, other than deduction on account of interest expense and in any previous year such deduction shall not exceed 20% of the dividend income or income from units included in the total income for that year without deduction under section 57. The restriction of deduction to 20% of income may pose difficulty in case of investment companies, NBFCs etc whose major capital comes from borrowings. In the past, there are several decided case laws holding that where dividend is treated as business income, full deduction of interest expenses is allowed against the same. For such companies, there is no rationale for treating the same as income from other sources and the allowing only 20% of dividend income as the interest expense. It will lead to endless litigation as interest and/or other legitimate business expense should be allowed to be deducted against such dividend income in full without any restrictions.	<i>It is suggested that:</i> <i>(a) the proviso to section 57(i) be omitted as setting limit of 20% of interest deduction against dividend income;</i> <i>Alternatively, Proviso to section 57 may be modified to make reference to “gross total income” to clarify that deduction of interest expense is required to be allowed against gross dividend income and not net dividend income after deduction under section 80M of the Act.</i> <i>(b) suitable legislative amendment be made to bring dividend income of investment companies, NBFCs etc. to tax under the head ‘Profits and gains of business or profession’, so that full deduction of interest and or other related expenditure be allowed therefrom.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
59.	Section 70 – Insurance industry concerns	The insurance industry has a long gestation period and it takes a long time to achieve a break-even. Accordingly, the limit of 8 years for carry forward and set off of business losses is not sufficient.	<i>It is suggested that insurance companies should be allowed to carry forward and set-off unabsorbed business losses for an indefinite period.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
60.	Section 71(3A) - Loss from House Property	Section 71 of the Act provides for set off of any loss arising under the head “Income from House Property” against any other head of income. As per section 71, it is restricted to set off the losses to the extent of Rs 2,00,000 against any other head of income and the unabsorbed loss to be carried forward upto subsequent 8 assessment years. Middle class and lower class people generally invest in property by obtaining loan from the banks. The amount of interest paid is always higher than the rental income earned against such property and as per the current provisions the loss could be set off against other income. This has always been a motivator to invest in the real estate. The amendment will hit the salaried class badly since many salaried class have real estate as one of the dominant asset class in the portfolio. Many of them have borrowed to acquire a house which is self-occupied. Further, the Finance Minister in his budget speech focused on housing development. The restriction of set off of loss will not promote development of housing projects. The carry forward of the unabsorbed loss under Income from house Property is	<i>It is therefore suggested to withdraw the said amendment. Alternatively, the limit of Rs 2 lakhs may be raised to atleast Rs 5 lakhs.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		allowed for a period of 8 assessment years. However, practically there would not be any positive income since the interest cost is very high.	
61.	Section 72A - Carry forward of losses in case of amalgamation or merger for service industry	Currently, all industrial undertakings in the Manufacturing, Software, Electricity, Telecom, etc. sectors are allowed to carry forward of losses in case of merger / amalgamation. Service industry undertakings in general are not allowed such carry forward with the exception of Software and Telecom services. Media and Entertainment Industry requires huge investments in digitization, technology set up and distribution network. Seeking level playing field with other services like Telecom, Software etc. As per the Notification issued by the Govt. in 2004, Broadcasting and Cable Services are a part of Telecommunication Services. Consolidation of media industry will help in rapid growth and generation of substantial employment opportunities and faster digitization.	<i>It is suggested to amend Section 72A(7)(aa) to also include Broadcasting, Media and Entertainment sector.</i> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
62.	Section 78 - Issue of carry forward and set off of losses of an LLP	Currently, a firm assessee is not allowed to carry forward and set-off its losses to the extent of the share of the partner who has retired/ resigned as a partner. This is so, as firm and partners are treated as same under the civil law and a firm does not have a separate legal entity, unlike a company being a body corporate. Under Income Tax, firm is a separate person and it includes an LLP. LLP is a body corporate under LLP Act, 2008 and has separate legal entity and perpetual succession. An LLP may have 100 or 1000 partners, as there is no limit on maximum number of partners under	<i>It is suggested that section 78 and 79 may be suitably amended to allow / restrict carry forward of losses and set-off of an LLP assessee under section 79 and not as per section 78.</i> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



Sr. No	Section	Issue/Justification	Suggestion
		LLP. Being a body corporate like company, an LLP having separate legal entity, the carry forward of losses and set-off should not be similar to a firm but should be similar to a company.	
63.	Section 79 – (a) 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 off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred during the period of 7 years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year. Similar position remains even after the substitution of section 79 vide the Finance (No. 2) Act, 2019. The existing provisions provide for restrictions on carry forward of losses in case of substantial change in shareholding of the Indian company. As per the current provisions, shareholders of the company at the end of the financial year in which the loss was incurred must continue to own at least 51% of the shares in that company in the year in which such carry forward loss is to be set off; otherwise, the company loses the ability to carry forward such loss. The Government, in pursuance of the start-up action plan and facilitating ease of doing business, introduced a beneficial	<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 hold upto 26% of the voting power in the year of set-off. In any case, the turnover condition for a company to be an 'eligible start up' may be omitted in Explanation (ii)(b) to section 80-IAC.</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 10 years.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		regime for start-up to carry forward and set off losses. It has been provided that as long as all the original shareholders of the Company at the end of the financial year in which the loss was incurred continue to be shareholders of such shares in the financial year in which the loss is to be set off, the benefit of carry forward of loss would be available. Another issue is on account of turnover condition specified in Explanation (ii)(b) of section 80-IAC for a company to qualify as 'eligible start up'. The condition is that turnover of such company should not exceed Rs. 25 Crore anytime between F.Y. 2016-17 to F.Y. 2020-21. This condition also creates uncertainty for startups in the matter of section 79 limitation as generally applicable to closely held companies i.e., whether the turnover limit has to be adhered to in the year of set-off as well. The condition of continuing to hold all shares appears to be applicable not only to the initial promoters but also all persons investing subsequently in the startup, which may cause genuine practical hardship. This may also be practically difficult for the start-up company to achieve since PE investors generally look at time frame of 3 to 5 years for exit at a higher price. The exit may happen either through secondary sale in subsequent round of PE funding or through IPO. Any such exit will trigger section 79 limitation for the start-up company.	
	<i>(b) Insertion of third proviso in Section 79 - relief for change in shareholding of subsidiaries pursuant to</i>	Section 79 of the Income-tax Act, 1961 restricts the carry forward and set off of losses in the hands of a closely held company, if the shares carrying more than 51% of voting power of such company are not beneficially held by persons who beneficially held such shares on the last	<i>It is suggested that section 79(2)(c) be amended to clarify that it applies both to the company undergoing resolution process as well as its subsidiaries. The provision may be modified as</i>



Sr. No	Section	Issue/Justification	Suggestion
	resolution plan	day of the previous year in which such loss was incurred. In general, implementation of resolution plan in respect of a company undergoing resolution process may involve either issue of additional shares or other restructuring exercise resulting in change in the shareholding of such company beyond the permissible limit u/s 79. In addition, thereto, the company may also be required to hive off its investments in subsidiaries by selling its stake to interested investors. This may result in change in shareholding of the subsidiaries triggering consequences u/s 79 of the Income-tax Act, 1961 in the hands of subsidiaries as well. Hence, this may discourage the interested acquirers/bidders from making investments in loss making subsidiaries and also in offering higher bids. Finance Act 2018 has amended the provisions of section 79 by inserting third proviso to section 79, to state that section 79 will not apply to companies, where the change in the shareholding is pursuant to implementation of a resolution plan approved by adjudicating authority (AA). This benefit is to be provided after an opportunity of being heard is given to the jurisdictional Commissioner or Principal Commissioner. Similar position remains even after the substitution of section 79 vide the Finance (No. 2) Act, 2019. Issue: Thus, in terms of the third proviso to section 79, carry forward and set off of losses of a company undergoing insolvency resolution process as well as its subsidiaries will not be impacted by	follows: <u>“Provided also that nothing contained in this section shall apply to a company as well as its subsidiary where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner holding jurisdiction over the applicant”.</u> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		section 79, if the change in shareholding takes place pursuant to a resolution plan approved by AA. While such be the case, it is likely that NCLT will not hear Principal Commissioner/Commissioner holding jurisdiction over the subsidiaries. Hence, the reference to an opportunity of being heard to be given to the Principle Commissioner/Commissioner by AAs may raise a doubt that the third proviso to section 79 only refers to the company which is undergoing a resolution process under IBC.	
64.	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 suggested that it be clarified that whether section 79 would apply only to a change of more than 51% in the immediate holding company, or whether it would also apply in the case of a change in the ultimate holding company.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
65.	Section 79 – Covid19 concerns	Section 79 is an anti-abusive provision and was inserted with an intent to curb the taxpayers' attempts at acquiring loss making Company and claim / enjoy the tax benefits of such losses while conducting profitable business. Issue: COVID-19 has thrown many challenges and there could be many distressed sales of entities having losses. In view of section 79, change in management may result in accumulated losses getting lapsed.	<i>In current scenario, most of the sales would be distressed sales and not with an intent to claim tax advantage. Hence, it is suggested that an exemption may be carved out for the distressed sales made during COVID-19 pandemic while putting adequate safeguards.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



CHAPTER VIA

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME



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

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
66.	Section 80-IBA – Need to prescribe a form/certificate	Under section 80-IBA, inserted by the Finance Act, 2016 from 1.4.2017, deduction of 100% of profits derived from development of affordable housing projects approved on or after 1st June 2016 is available, subject to fulfillment of specified conditions. It prescribes multiple conditions to be fulfilled by assessee in order to claim deduction under this section. However, no monitoring mechanism has been prescribed to determine the correctness of claims made by the concerned assessees. This may ultimately lead to leakage of revenue.	<i>It is suggested that a monitoring mechanism i.e. a form may be prescribed under section 80-IBA to be certified by an Accountant so that assessees claiming deduction under this section may be checked for correctness of claims made as well as fulfilment of conditions prescribed i.e form to be prescribed to be incorporated in the section itself.</i> (SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
67.	Section 80-IBA - Incentive to affordable housing	The Finance Act, 2016 granted benefits for affordable housing to housing projects approved on or after 01.06.2016. The Finance Act, 2017 has further relaxed some of the relevant conditions.	<i>It is suggested:</i> <i>(a) that applicability of section 80-IBA be extended to affordable housing projects to give benefit to first house holding owners by way of extending the higher carpet area criteria to achieve the Government's mission for housing for all.</i> <i>(b) that the time line for deduction u/s. 80-IBA be increased to 31.03.2022 to enable planning investments in real estate developments and the MAT/AMT be removed from such projects.</i> (SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)



Sr. No	Section	Issue/Justification	Suggestion
68.	Section 80C – Various suggestions	PPF is used as a means of savings by entrepreneurs and professionals. While the assessee in employment have the compulsion of saving 12% of their salary (with matching contribution from employers), the only safe and tax efficient saving option available for self-employed assessee is PPF. Hence, the suggestion to increase the ceiling of PPF contribution to Rs.3 lakhs. This may also boost the domestic savings as a percentage of GDP and will have an anti-inflationary impact. Further, the present limit of INR. 1,50,000 has not been increased for several years and requires reconsideration. The revised monetary limit will help in increasing the savings of individuals and is necessary keeping in view the rate of inflation.	It is suggested that: a) the annual limit for contribution to PPF be increased to Rs. 3 lakhs from the present ceiling of Rs. 1.5 lakhs. b) the maximum limit for deduction under section 80CCF may be increased from Rs.1.5 lakhs to Rs.3 lakhs. c) full deduction for health insurance premium paid u/s.80D may be allowed and not to tag it with deduction for medical expense. Apart from deduction for health insurance premium, a separate deduction for medical expenses incurred should be made available. The justification for such separate deduction is lack of social security cover and the inability of public health sector to cater to the needs of the tax payers by providing efficient hygienic and timely medical treatment. d) the limit for deduction under section 80DDB for expenses incurred on treatment of certain chronic diseases may be increased. As per section 80CCC, if any contribution is made by the assessee to a pension fund and deduction is claimed under that section, all withdrawals from the scheme by the assessee (including the principal amount) ARE SUBJECTED TO TAX. This is causing hardship in respect of those assessee who have simply made contributions to this



Sr. No	Section	Issue/Justification	Suggestion
			<i>scheme and have not claimed any deductions. Hence, the suggestion to amend this section to the effect that in cases where deduction is not claimed under this section, only the appreciation component of the investment will be subjected to tax. Even if deduction is claimed, only the amount of deduction claimed should be added to the income at the time of withdrawal from the scheme and not the entire maturity proceeds. Of course, any appreciation over the principal invested can also be taxed as capital gain.</i> <i>(e) The quantum of deduction under section 80C be increased from Rs 1,50,000 to Rs 2,50,000 to provide savings opportunities to public at large.</i> (SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
69.	Section 80C – Other than Life Insurance Premium payments	Deduction for insurance premium relating to travel, home etc. will boost the policyholders to secure their assets like car, home, etc. and also to avail personal accident cover.	<i>Currently, deduction under section 80C of the Act is available for LIP and a deduction under section 80D of the Act is available for Health Insurance premiums. It is suggested that a separate deduction to the policyholders may be made available for payments relating to travel insurance, home insurance or personal accident insurance policy.</i> SUGGESTION FOR



Sr. No	Section	Issue/Justification	Suggestion
			RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
70.	Section 80CCC – Enhancements of limit	Pension policies & NPS both are similar products and therefore tax implications on these products should not make them different products. Issue: Disparity between pension schemes offered by Life Insurance companies and New Pension Scheme (NPS).	<i>It is suggested that the enhanced limit for premium paid on Pension Policy under section 80CCC read with section 80CCE may be provided as follows:</i> . Additional deduction for Rs 50,000 for premium paid for pension policy issued by the Life insurance companies similar to that provided in section 80CCD(1B) of the Act. i. Further, additional deduction under section 80CCC to the extent of 14% by Central Government/10% of salary similar to section 80CCD(2) of the Act. i. Above limits may be in addition to existing limit. i. Similar to section 80CCD(5), uncommuted portion (generally 2/3rd) under a pension policy which is mandatorily used to buy an annuity plan should be treated as not having been received and hence, not taxable. v. 60% Maturity proceeds exemption as provided in section 10(12A) of the Act. SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
71.	Section 80DDB - Rule 11DD - Insert COVID-19 as	In current times, it may be considered to allow medical expenditure incurred on treatment	<i>It is suggested to insert 'COVID-19' as eligible disease for the purpose of claiming deduction</i>



Sr. No	Section	Issue/Justification	Suggestion
	eligible disease	COVID-19 as expenditure incurred for treatment of specified disease for the purpose of claiming deduction under section 80DDB.	under section 80DDB. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
72.	Section 80EEA - Tax incentive for affordable housing	In order to promote affordable housing, the Finance (No. 2) Act, 2019 has introduced a new section 80EEA so as to provide an additional deduction of up to Rs 1,50,000/- for interest paid on loans borrowed up to 31.03.2020 for purchase of an affordable house valued up to Rs 45 lakh. Issue I: Request to provide benefit to assesseees whose loan were sanctioned after section 80EE deduction was not available i.e. 01.04.2017 and onwards One of the conditions required to avail the benefit of section 80EEA is that the loan has been sanctioned by a financial institution during the period beginning on 01.04.2019 to 31.03.2020. Further, benefit of section 80EEA is available to assessee, being an individual not eligible to claim deduction under section 80EE. Here, it is pertinent to mention that benefit of section 80EE was available to assesseees whose loan had been sanctioned by the financial institution during the period beginning on 01.04.2016 and ending on 31.03.2017. Accordingly, there are hundreds of	(i) Considering the fact that no additional deduction was available for loans sanctioned during the period 01.04.2017 to 31.03.2019 taken by eligible assesseees for purchasing residential house property and satisfying conditions as mentioned in section 80EE/80EEA, it is suggested to make the following change in section 80EEA(3)(i): “ (i) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 20192017 and ending on the 31st day of March, 2020;” (ii) Accordingly, it is suggested that section 80EEA(1) may be amended as follows (by inserting the words ‘or construction’ akin to provisions of section 54 and 54F): “(1) In computing the total income of an assessee, being an individual not eligible to claim deduction under section 80EE, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition <u>OR CONSTRUCTION</u> of a residential



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



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



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



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



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



Sr. No	Section	Issue/Justification	Suggestion
		specified is that the assessee does not own any other electric vehicle on the date of sanction of loan. However, this condition is not there in the section 80EEB of Finance (No. 2) Act 2019. This condition is in line with a similar condition of not owning any other house property on the date of sanction of loan as per section 80EEA.	
74.	Section 80G – Request to reconsider cap of 10%	Section 80G provides deduction to the certain prescribed donations subject to the ceiling of 10% of gross total income. This ceiling gives additional tax burden for generous donors.	<i>It is suggested that the ceiling of 10% of gross total income may be reconsidered u/s 80G.</i> <i>(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i>



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

DETAILED SUGGESTIONS

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



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



Sr. No	Section	Issue/Justification	Suggestion
77.	Section 80TTB – Deduction in respect of interest on deposits in case of senior citizens – Request to extend the benefit by including interest on National Savings Certificate within the ambit of section 80TTB	The Finance Act 2018 inserted a new section 80TTB so as to allow a deduction upto Rs 50,000/- in respect of interest income on deposits made by senior citizens. The aforesaid new section, inter alia, provides that where the gross total income of an assessee, being a senior citizen, includes any income by way of interest on deposits with a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or a co-operative society engaged in the business of banking (including a co-operative land mortgage bank or a co-operative land development bank) or a Post Office as defined in clause (k) of section 2 of the Indian Post Office Act, 1898, a deduction of an amount up to Rs. 50,000 shall be allowed. This amendment will greatly benefit the senior citizens whose main source of income is generally from interest income. It is pertinent to mention that another main source of income for senior citizens is interest income on National Savings Certificate which can be purchased from Post Offices in India. In order to extend the benefit of provisions of section 80TTB to senior citizens, it is recommended that interest income arising to Senior Citizens on National savings Certificate may also be included within the ambit of section 80TTB.	<i>It is suggested that income by way of interest on National Savings Certificate also be included within the ambit of provisions of section 80TTB, so that senior citizens who have purchased NSCs from post offices are also able to avail the benefit of enhanced deduction under section 80TTB.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
78.	Section 80U – Consequential amendments required due to the enactment of ‘The Rights of Persons with Disabilities Act, 2016’ w.e.f.	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,	<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</i>



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



CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX



DETAILED SUGGESTIONS

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



CHAPTER XII-

DETERMINATION OF TAX IN SPECIAL CASES



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
80.	Section 115BAB(2)(b) - scope may be enlarged	Currently, the benefit of reduced tax rate is given to companies engaged solely in the business of manufacturing. Manufacturing companies may be allowed to undertake certain trading or job work activities, in addition to their normal manufacturing activities as this will help to increase their revenue in the initial stages of operation. This is line with the normal practices followed by manufacturers who even undertake job-work as ancillary activity.	<i>It is suggested that section 115BAB(2)(b) may be amended so as to enlarge the activities undertaken by manufacturing companies under it (eg ancillary trading/job work).</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
81.	Section 115BAC – Mediclaim expenditure u/s 80D may be allowed/included and other concerns	The Finance Act 2020 inserted a new section 115BAC providing individual and HUF tax payers an option to opt for alternative taxation rates from AY 2021-22 (FY 2020-21). The same is in line with the option provided to domestic companies under Taxation Laws Amendment Act, 2019 (TLAA) subject to non-availability of certain exemptions and deductions. It is beneficial only for tax payers who do not invest and/or save for tax benefits. It would put more money in the hands of such tax payers. However, certain concerns enumerated below merit consideration. (A) Allowance of mediclaim premium/medical expenditure u/s 80D given limited medicare and social security net Under section 80D, premium paid towards medical insurance for family members are allowed as deduction from taxable income. Till the time subsidized medical/healthcare facilities are available to all tax payers, it may be considered that at least medical insurance premium paid for family members allowable as deduction u/s 80D be allowed u/s 115BAC. It would continue to encourage all tax payers	<i>(A) It is suggested that at least deduction u/s 80D i.e. premium paid for keeping medical insurance policy for self and family members be allowed as a deduction even for assessee's opting for section 115BAC in order to encourage such tax payers to keep their Mediclaim policy alive, considering limited affordable healthcare</i>



Sr. No	Section	Issue/Justification	Suggestion
		including the ones opting for concessional tax regime to keep their mediclaim policy alive. (B) Clarification regarding applicability of section 115BAC to 'Non-Resident' Individual The new tax regime under section 115BAC is available to all individuals and HUFs irrespective of their residential status. Normally Finance Acts provide for different basic exemption limit for resident and non-resident individuals of the age of 60 years or more. There is a case to consider making amendment in section 115BAC so as to provide benefit of proposed provisions to resident individuals only and not to non-residents, in line with the special schemes introduced for domestic companies and resident co-operative societies under sections 115BAA, 115BAB and 115BAD. (C) Concern for employer(s) deducting tax: rates in force As per section 115BAC, the option shall be exercised for every previous year where the individual or the HUF has no business income, and in other cases the option once exercised for a previous year shall be valid for that previous year and all subsequent years. However, the employer liable to deduct TDS on such employees opting for section 115BAC would find it difficult to deduct tax at the rates mentioned in the said section due to application of governing section 192(1) which specifies that tax is to be computed on the basis of the rates in force for the financial year in which the payment is made. Rates in force are specified in the Part III of the First Schedule to the relevant Finance Act.	facilities in the country. (B) It is suggested that applicability of provisions of section 115BAC may be reconsidered in respect of non-resident individuals. (C) It is suggested that suitable legislative amendment be made in section 192 as well as the relevant Finance Act so that employers may deduct tax at the rates specified in section 115BAC for employees opting for the same, on the basis of declaration filed by the employee.



Sr. No	Section	Issue/Justification	Suggestion
		Accordingly, for employees opting for proposed section 115BAC, amendment needs to be made so that employer may deduct tax on concessional rates as provided instead of rates in force, after obtaining declaration from those employees who intend to opt for section 115BAC. Further, in case the employees change their option later on at the time of filing return, an employer who has deducted tax on the basis of the declaration filed by the employee (as to exercise or otherwise of option u/s 115BAC) should not be treated as an assessee-in-default. (D) Gross savings and capital formation would be impacted as tax savings lead to mandatory savings It may be taken into consideration that the option u/s 115BAC increases risk on next generation, removing in built social security mechanism in the present tax regime. Life insurance – Most people have taken insurance only due to income tax benefits and start at young age when premium is low. Now, most of them would miss taking life insurance due to ignorance and pressure of low income (high cost of living). Savings for long term (post retirement) - Many young assesseees will miss saving in PPF/ NSS and similar schemes. Also, for the Government, this was a good source of long term funds. In other words, the concerned assessee may opt for proposed concessional tax rates	<i>It is suggested that section 115BAC may be introduced only after putting in place adequate social security benefits for assesseees opting for concessional tax rates and thereby not investing in long term retirement benefit schemes like PPF/NPS etc.</i>



Sr. No	Section	Issue/Justification	Suggestion
		subject to forgoing certain exemptions and deductions currently available like contribution to PPF, contribution to NPS, Term Life insurance premium etc. Some of such expenditure are basically long-term retirement savings which are opted by tax payers considering the tax benefits available. Such important savings cum investments would be considerably reduced if an individual opts for new concessional tax rates. As is well known, our country does not offer any significant social security benefits unlike some of the developed nations. Long term retirement savings would be considerably reduced and such tax payers in the long term may suffer. Also, investment in housing may reduce as interest on loan for self-occupied house property {u/s 24(b)} and principal repayment for such housing loan (u/s 80C) won't be available. Adequate social security measures to be put in place before introducing section 115BAC. Further, there are many calculations which show that the alternate tax structure for individuals is not really beneficial due to removal of standard deduction, multiple slabs, etc. As individuals cannot afford to spend on consultation, from ease of tax perspective, it may also be considered to have only one tax structure (as present one) and reduce the tax rates. Eg, tax slabs such as Rs 5 lacs to 20lacs - 5%; Rs 20lacs to Rs 50 lacs 10%; Rs 50 lacs to Rs 100lacs - 20% and above Rs 100 lacs - 30%. This will ensure more disposable income and many will also come into tax net. (E) Need for legislative amendment for individuals having income upto Rs 5 lakhs and availing rebate u/s 87A	<i>It is suggested that section 115BAC may be suitably amended so that eligible</i>



Sr. No	Section	Issue/Justification	Suggestion
		It may be noted that section 115BAC starts with a non-obstante clause i.e. notwithstanding anything contained in the Income-tax Act, 1961. However, due to this, a concern has arisen for individuals having income upto Rs 5 lakhs opting for section 115BAC. Section 87A pertaining to rebate of income-tax in case of certain individuals provides that resident individual taxpayers having total income up to Rs 5 lakhs will get full tax rebate and therefore, will not be required to pay any income tax. The same intent has been put forth by Hon'ble Finance Minister as well. As per proposed section 115BAC, resident individuals having income upto Rs 5 lakhs opting for section 115BAC may not be able to have the benefit of section 87A rebate. It requires suitable legislative amendment.	<i>resident individuals can avail rebate u/s 87A.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
82.	Section 115BBDA - Request to recommend suitable amendments when applying provisions of section 115BBDA and section 115JC of the Income-tax Act, 1961 simultaneously	Section 115JC as inserted vide the Finance Act 2011 and applicable w.e.f. AY 2012-13 provides that where the regular income tax payable by a person, other than a company, for a previous year is less than the alternate minimum tax for such previous year, the person would be required to pay income tax @ 18.5% on its adjusted total income. Section 115BBDA as inserted vide the Finance Act 2016 and applicable w.e.f. AY 2017-18 provides that income by way of dividend in excess of Rs. 10 lakh is chargeable to tax @ 10% on gross basis in case of all resident assessee except domestic company and certain funds, trusts, institutions, etc. Issue arises when both the provisions are applicable to an assessee and it needs to be considered which rate of tax to be applied (i.e.	<i>It is requested to recommend suitable amendments in the provisions of section 115BBDA and/or section 115JC of the Income-tax Act, 1961 so as clarify their applicability in case both the provisions are applicable to an assessee.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		whether 10% or 18.5%). On a joint reading of both the provisions, it comes out that while dividend income in excess of Rs. 10 Lakhs would attract tax @ 10% u/s 115BBDA of the Income-tax Act 1961, the assessee might have to pay tax @ 18.50%, if Alternate Minimum Tax (AMT) were to be applicable u/s 115JC of the Income-tax Act 1961, and in most cases it would, if dividend income were to constitute a major portion of the total income. However, both the sections start with a non-obstante clause, i.e. 'notwithstanding anything contained in this Act' and therefore, there appears to be an apparent contradiction or repugnancy between the provisions. Principles of harmonious interpretation suggest that both the provisions have to be made workable. In this regard, the Apex Court has held in a number of judgments that it is a rule of construction that if two special statutes contain non obstante clauses excluding the applicability of other statutes, as in 'notwithstanding anything contained in the Act or any other law for the time being in force', the latter enactment shall prevail. If, however, one is a general Statute and the other a special Statute, then this rule may not apply, and the purpose sought to be achieved by the special enactment needs to be examined {Case laws referred - Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of India (1993) 2 SCC 144, Allahabad Bank vs. Canara Bank (2000) 4 SCC 406, Bank of India vs. Ketan Parekh (2008) 8 SCC 148}.	



Sr. No	Section	Issue/Justification	Suggestion
		This is a rare situation where in the same enactment (i.e. Income-tax Act, 1961), two or more non obstante clauses are to be dealt and is applicable to one and the same assessee. Both sections 115BBDA and 115JC of the Income-tax Act, 1961 are special provisions inserted for taxing specific incomes under special Chapters in the Income-tax Act, 1961. On applying the ratio of the Supreme Court judgements as cited above, albeit rendered in the context of two enactments, it appears that section 115BBDA of the Income-tax act, 1961, being a latter insertion in the Act, shall prevail. However, the other view is also quite plausible. Accordingly, it needs to be clearly specified which provision (or rate of tax) shall prevail in case both sections 115BBDA and section 115JC of the Income-tax Act, 1961 are applicable to an assessee. Similar issue arises when section 112A (rate of tax @ 10%) and section 115JC/115JB (rate of tax @ 15%) of the Income-tax Act, 1961 is applicable to an assessee.	
83.	Section 115BBF – Rationalizing patent tax regime	India introduced its patent box regime vide Finance Act 2016 with effect from 01 April 2017. Under the regime, royalty income in respect of a patent developed and registered in India shall be taxable at a flat rate of 10%. The existing patent box regime suffers from the following issues: (i) <i>The patents to be ‘registered’ in India</i> - It is unclear as to whether a patent which has been applied for, but for which registration has not been granted will qualify under this regime. (ii) <i>Coverage of regime has been restricted to Patents</i> - Patent Box regime is not available to other	Following suggestions are intended to rationalise existing Patent tax regime: (i) <i>It may be clarified that benefit of regime may be obtained where a patent is applied for, but registration has not yet been granted under the Patent law.</i> (ii) <i>It is suggested that the Patent Box regime should be extended to other forms of IPRs, like industrial design, copyrights, trademarks, etc. so as to promote IPR registration in</i>



Sr. No	Section	Issue/Justification	Suggestion
		IPRs, like industrial design, copyrights, trademarks, etc. (iii) <i>No guidelines on outsourcing of IP development</i> - There are no guidelines on outsourcing of R&D functions. Thus, limited outsourcing may also raise an issue on availability of benefit under patent box regime. (iv) <i>Initial patent developed by individual</i> - The benefit is available to the true and first inventor of the invention. Thus, where a company acquires a patent developed by an individual and invests to develop it further to make it marketable, it may not be eligible for the benefit. The suggestion would strengthen the existing Patent Box regime. Further, the suggestion is intended to encourage R&D in India, stimulate growth and reduce litigation.	India. (iii) <i>It may be clarified that benefit of the regime shall be available, subject to a reasonable threshold, in cases where IP development is outsourced.</i> (iv) <i>It is suggested that the existing regime may be liberalised to grant benefit to a person who acquires patent from the 'true and first inventor' and further makes is commercially useable.</i> (SUGGESTION TO CHECK TAX AVOIDANCE)
84.	Section 115BBE – Need to reconsider the high rate of tax	Section 115BBE was amended during the demonetization period where if income was assessed u/s 68 to 69D, tax would be charged @ effective rate of 79%. In the current scenario, the rate is very high / harsh and needs to be reconsidered. It is not required now to tax at such high rate.	<i>It is suggested that rate of tax u/s 115BBE be restored to 30% and surcharge thereon be reduced as per applicable total income levels/slab rates.</i> (SUGGESTION TO CHECK TAX AVOIDANCE)
85.	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	The introduction of section 115BBG vide the Finance Act, 2017 providing for a 10 percent tax on income from transfer of carbon credits is a welcome move. This would go a long way in helping to resolve the uncertainty and litigation over the taxability of income from the transfer of carbon credits going forward. Consequent amendment is required in the definition of the term 'income' under Section 2(24) of the Income-tax Act to include the income from transfer of carbon credits. Further, the position regarding taxability of	<i>It is suggested that section 2(24) may be amended to include income from transfer of carbon credits in the definition of "income".</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> (SUGGESTION FOR



Sr. No	Section	Issue/Justification	Suggestion
	prior assessment years	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.	RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



CHAPTER XII-B

SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES



DETAILED SUGGESTIONS

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



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



Sr. No	Section	Issue/Justification	Suggestion
			REDUCE/ MINIMIZE LITIGATIONS)
88.	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 under section 139(5) or prior period adjustments may be allowed to be adjusted from book profit in the year in which errors are discovered.</i> (SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)



CHAPTER XII-D

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
89.	Section 115-O - Inclusion of loans within section 2(22)(e)	Section 2(22)(e) is now amended to provide that, in the event of grant of loans and advances by closely held company either to the shareholders having 10% equity or to a concern in which such 10% equity holder has 20% beneficial ownership, which the company possesses. Such tax will be payable regardless of the fact that the loan may have been given against proper interest and may have been repaid on due date. When a loan is given to a tainted concern, there has been a controversy whether the amount of dividend needs to be taxed in the hands of equity holder (who holds a nexus with the concern) or in the hands of the concern. Issues: (i) There could have been basic debate whether any such provision is at all fair where loans and advances are given either on proper interest and re-payment terms or when loans and advances are given in connection with the business needs or in the ordinary course of business. Avoidable litigation has arisen even in cases where the advances are given for the purpose of purchase of goods in the ordinary course of business. The said amendment makes the provision stupendously unfair. (ii) The limit of 10% shareholding, which can establish nexus with the concern is considered in practice to be considerably low and impractical. It is quite possible that an investor like PE investor or a passive investor may create such a situation without the concerns being aware of the	It is suggested that: (i) <i>The continuance of the base provision itself in the current form may be re-considered. The provision was introduced at a time the tax rates were materially substantial, governance was difficult and closely held companies were almost universally governed by a singular family.</i> (ii) <i>Assuming it is not re-considered, by way of rationalisation, the applicability may be restricted to a case where the shareholder has at least 25% stake in each company, so as to capture a loan or advance to a concern.</i> (iii) <i>It would be desirable to address the genesis of the controversy instead of punishing the closely held companies. The current controversy may be retained with by the legislature specifying whether the amount of dividend should be taxed in the hands of the concerned shareholder or in the hands of the concern.</i> (iv) <i>From the scope of dividend, the advances and loans which are in connection with the business or which are in ordinary course of business should be excluded. Currently, this exclusion is available only to certain specific categories of taxpayers.</i> (v) <i>It would also be fair to exclude loans and advances which are given on terms which are regarded as ALP and / or reasonable.</i> (vi) <i>A liberal set off may be available</i>



Sr. No	Section	Issue/Justification	Suggestion
		same. Further, the requirement is beneficial holding in the concern. It may not be possible for a company giving loan to ascertain the beneficial holding of its shareholders in another concern. The company will be dependent wholly on the certification of the shareholder. Further, if the company proceeds on the basis of the certification provided by shareholder and the same were to be untrue, there might be adverse consequences considering the company and its principal officer will be regarded as assessee in default and all consequences of interest, penalty prosecution, etc. will consequently follow. (iii) One wonders whether the controversy (which is at the genesis of the said amendment) could have been taken care of by specifying in an explicit manner whether the amount will be chargeable in the hands of the concern or in the hands of the concerned shareholder. That alone was the controversy and a difficult solution may be avoided to get rid of the controversy (iv) The company will have extreme consequences of not being able to comply with the provision. This may often be due to unawareness. Unwarranted litigation may accrue on such subject. (v) It could be within the corporate governance for one company to give a loan to another on fair terms. Taxability in the hands of the company in the form of DDT – that too, where a mere 10% holder has shares in the company is a harsh blow to the remaining 90% of the shareholders who lose their value on simultaneous basis upto the amount of tax paid. This would be a	<i>by amending section 2(22)(e) to provide that, out of amount distributed by the company either in the same year or in the succeeding year, the amount of DDT paid earlier will be considered as a credit against DDT payable at the time of distribution.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		permanent loss to the shareholders. They are being punished for no fault of theirs. (vi) There is very limited scope available for mitigating the liability by means of set off provided for in the section. This is unlikely to be a possibility where loan is to a concern. As a result, the corporate group will end up with extraordinary liability which can range up to 70.53 % of income of the company. This will be a highly discriminatory treatment against the closely held company structures.	



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
90.	Section 115QA – Effect on foreign investments	As per section 115QA of Income-tax Act 1961, (Chapter XII-DA), in the case of distribution of income by the unlisted company on Buy back of shares the law casts an obligation on the company to pay additional income tax @20% on the distributed income in addition to the corporate tax. In the case of foreign investor, the tax of 20% becomes payable even though the amount received by him in foreign currency works out to less than the amount which was brought in at the time of initial investment. To elaborate, the following illustration has been given: 1. Amount invested by foreign investor in unlisted company = USD 1 million 2. Amount for which shares were issued (Exchange rate USD 1 = INR 40) = INR 4 Crores 3. No. of shares issued @10 per share = 40,00,000 4. No. of Shares bought back by the company (25% of share issued) 10,00,000 5. Amount paid to foreign investor (buy back price INR 12.50 per share) = INR 1,25,00,000 6. Amount received by foreign investor {USD 1 = INR 60} = USD 208,333 7. Loss to foreign investor (i.e. 250,000-208,333) = USD 41,667 8. Additional tax payable by the company (125,00,000–100,00,000)*20% = INR 500,000 Tax to be paid by the company on Rs. 25,00,000 is the final tax in addition to corporate tax and the amount of tax so paid is nothing but tax paid by the foreign investor. The foreign investor is thus required to pay tax even when he makes losses. Private equity investor who had invested in India are facing double concern - firstly in the form of sharp depreciation in	<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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



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



CHAPTER XII-EB

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



Sr. No	Section	Issue/Justification	Suggestion
91.	a) Recovery provisions on trustees etc. – Section 115TD(5)	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> The term 'principal officer' is very widely defined in section 2(35) as follows- <i>"principal officer', used with reference to a local authority or a company or any other public body or any association of persons or anybody of individuals, means— (a) the secretary, treasurer, manager or agent of the authority, company, association or body, or (b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;"</i> 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.	<i>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.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
	b) Section 115TD(5) - Period of 14 days insufficient	Section 115TD(5) reads as follows: <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</i>	<i>Time limit may be suitably modified /increased.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



The Institute of Chartered Accountants of India

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



CHAPTER XIV-

PROCEDURE FOR ASSESSMENT



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
92.	Section 139 – Due date to file ITR for assessee required to file transfer pricing report u/s 92E to be extended to 31st December of the AY in line with the extension of due date for assessee liable to tax audit to 31st October of the AY	The Finance Act 2020 amended section 139(1) inter alia so that due date to file ITR form for specified assessee has been extended to 31st October of the AY from 30th September of the AY. Also, distinction between a working and a non-working partner of a firm has been removed with respect to the due date as specified above. Issue The due date of filing return of income of assessee subject to tax audit is extended from 30th September to 31st October of the AY. However, an assessee who is required to furnish a report referred to in section 92E are required to file their ITR forms by 30th November of the AY. It is suggested that the current gap of 2 months may be maintained between filing of ITR forms for assessee subject to tax audit and assessee liable to transfer audit. Accordingly, the due date for furnishing return for assessee required to file a report under section 92E may be extended to 31st December of the AY from current 30th November of the AY.	<i>It is suggested that the clause (aa) to Explanation 2 to section 139(1) be suitably amended so that due date to file ITR form for assessee who is required to furnish a report referred to in section 92E be extended to 31st December of the AY from 30th November of the AY in line with amendment in section 139(1) vide the Finance Act 2020.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
93.	Seventh proviso to section 139(1) – Mandatory furnishing of return of income - Deposit amount exceeding one crore rupees in current account may be made applicable to all types of accounts	The Finance (No. 2) Act, 2019 amended section 139(1) by inserting a proviso so as to specify certain high value transactions wherein ITR filing is being made mandatory. One of the transactions specified is if during the previous year, assessee has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank. Issue I: Scope to be enlarged As all current accounts maintained with the banks are PAN based i.e. PAN is one of the	<i>(i) It is suggested that scope of clause (i) of seventh proviso to section 139(1) pertaining to</i>



Sr. No	Section	Issue/Justification	Suggestion
		mandatory KYC docs for opening a current account with a bank, so transactions in such current accounts can easily be tracked. There is a case to extend the scope of aforesaid specified transaction from deposit in a current account to all the accounts maintained with the bank i.e be it saving account or any other account. This will better serve the intent of the government to make mandatory filing of ITRs involving high value transactions. Further, the aforesaid high value transaction is limited to current account maintained with a banking company or a co-operative bank. It is better if the account maintained with a co-operative society engaged in carrying on the business of banking as well as a post office also gets covered here. This will also align with the provisions of section 194N. Issue II: The term 'expenditure' may be replaced with term 'payment' Clause (ii) and (iii) of seventh proviso to section 139(1) reads as follows: "(ii) has incurred <u>expenditure</u> of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or (iii) has incurred <u>expenditure</u> of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or" [emphasis supplied] The term 'expenditure' may not convey the meaning intended for due to the following two reasons: (a) Incurring expenditure normally connote a 'business' expenditure and may not cover/apply to non-business expenditure although intention is quite clear that expenditure of foreign travel and electricity consumption may be for any purpose including personal.	deposit exceeding Rs 1 crore may be extended to include: (a) all types of account maintained with specified authorities i.e saving account etc (along with current account), and (b) deposits made in accounts maintained with a co-operative society engaged in carrying on the business of banking as well as a post office (apart from a banking company or a co-operative bank) within its ambit to align with provisions of section 194N. (ii) It is suggested that the term 'expenditure' as used in clause (ii) and (iii) of seventh proviso to section 139(1) may be changed to the term 'payment' so as to better convey the intent of the amendment. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		(b) Suppose, parents of assessee 'X' has gone for foreign air travel and payment thereof made by 'X'. Now the expenditure is being incurred by the parents but is being paid by 'X'. The purpose is to get ITR filed by 'X' and not by his parents.	
94.	Explanation 2 to section 139(1) – Need to synchronize due date of partner with that of Firm liable for domestic transfer pricing provisions	As per clause (a)(ii) of Explanation 2 to section 139(1), the due date to file ITR for a working partner of a firm whose accounts are required to be audited under Income-tax Act or under any other law for the time being in force is 30th September of AY. However, as per clause (aa) of Explanation 2 to section 139(1), the due date to file ITR in the case of an assessee who is required to furnish a report referred to in section 92E is 30th November of AY. Difficulty is being faced by working partners of Firm which are liable to file its ITR by 30th November of the AY due to application of domestic transfer pricing provisions under section 92BA. It has been observed that difficulties are being faced by partners (including working partners) as their Income-tax return form requires them to mention the capital balance. It is imperative to note that it becomes quite difficult for the partners to mention such capital balance on 31st March in the firm (liable to get its accounts audited and file its return by 30th November in case of applicability of section 92E read with section 92BA)) in his return, until the audit of such firm is completed. Thus, it is suggested that said difficulty may be resolved as it is not practicable to have different dates of filing for such assesseees.	<i>It is suggested that section 139(1) may be appropriately amended so that due date to file ITR for working partners of a firm which is liable to furnish its ITR by 30th November of the AY (due to application of section 92E r.w.s. 92BA) be synchronised with the existing due date of 31st October of the AY applicable for working partners of such firms. It may kept in mind that non-working partners have to give balance of capital accounts in ITR. So, all partners should have same ITR filing due date as that of a firm.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
95.	Section 139(4) – A reasonable penalty may be imposed for belated filing after expiry of time allowed	As per section 139(4) pertaining to belated return, a person may furnish the return of any previous year at any time before the end of relevant AY (w.e.f. AY 2018-19). If a person misses the aforesaid deadline due to genuine	<i>It is suggested to amend section 139(4) so as to allow one more year after the end of AY for filling the belated return but with a reasonable amount</i>



Sr. No	Section	Issue/Justification	Suggestion
		reasons beyond his control, he may be allowed to use an extended date with a reasonable amount of penalty.	of penalty say of Rs 100 per day. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
96.	Section 139(4) and 139(5) – Time limit for filing belated return reduced - Reference to return in response to section 142(1) may be included in Sections 139(4) and 139(5)	Prior to amendment made by the Finance Act, 2016: Section 139(4) provided that a person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Similarly, Prior to amendment made by the Finance Act, 2016, Section 139(5) provided that if any person, having furnished the return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142 discovers any omission or any wrong statement therein, he may furnish a revised return at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier. The Finance Act, 2016 has substituted section 139(4) & 139(5) as follows: “(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.”; “(5) If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised	It is suggested that- (i) Reference to sub-section (1) of section 142 may be reinstated in new section 139(4) i.e., enabling provision to be made for filing of belated return in response to notice under section 142(1). (ii) Section 139(5) may be amended to provide for revision of return filed in response to notice under section 142(1), in line with the intent expressed in the Explanatory Memorandum. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		<i>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-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.	
97.	Section 139 – Insertion of details of exempt income in the acknowledgement of ITR Forms	Currently, acknowledgement of ITR Form V does not contain the details of exempt income. For the purpose of obtaining VISA and Loan etc., only ITR V - Ack is asked for which does not have full details which result in cancellation in VISA applications.	<i>It is suggested to insert details of exempt income in the acknowledgement of ITR Form V. Earlier the acknowledgement use to have taxable as well as exempt income which has been withdrawn from current year's acknowledgement i.e. ITR V.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>
98.	Section 139A – Amendment / surrender of PAN	There is no provision as of now for amendment /surrender of PAN. Lots of jurisdictional issues arise due to non-intimation of change in address etc.	<i>It is suggested that provision may be made for:</i> <i>(a) application within 30 days of amendment in PAN data and</i> <i>(b) surrender on</i> <i>- death (by legal representative),</i> <i>- merger,</i> <i>- conversion,</i> <i>- liquidation,</i> <i>- strike-off.</i>



Sr. No	Section	Issue/Justification	Suggestion
			(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
99.	Section 139A – Need for certain persons to mandatorily have PAN	Currently, certain persons who are required to file ITR are not mandated to apply for PAN. These include persons required to file ITR u/s • 139(4B) • 139(4C) • 139(4D) • 139(4E) • 139(4F)	<i>It is suggested that aforesaid sections be added to section 139A(1)(iii) where only persons covered u/s 139(4A) are required to obtain PAN.</i> (SUGGESTION TO IMPROVE TAX COLLECTION)
100.	Section 142A - Estimation of value of asset by Valuation Officer	As per the provision prior to Finance (No. 2) Act, 2014 contained in section 142A, the Assessing Officer may, for the purpose of making an assessment or re-assessment require the Valuation Officer to make an estimate of the value of any investment, any bullion, jewellery or fair market value of any property. On receipt of the report of the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard take into account such report for the purpose of assessment or re-assessment. Section 142A did not envisage rejection of books of account as a pre-condition for reference to the Valuation Officer for estimation of the value of any investment or property. Further, section 142A does not provide for any time limit for furnishing of the report by the Valuation Officer. As per the amended section 142A vide Finance (No. 2) Act, 2014, the Assessing Officer may, for the purpose of assessment or re-assessment, refer any asset, property or investment to a Valuation Officer, necessary for estimating its value. The Assessing Officer is not required to record any satisfaction about the correctness or completeness of the accounts of the assessee. Further, the report of the Valuation Officer may be accepted after	<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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		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 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.	
101.	Section 145 - Taxation of retentions	Income tax law is more or less settled that retention money becomes taxable only when	<i>It is suggested that suitable amendment be made to</i>



Sr. No	Section	Issue/Justification	Suggestion
	money/margin money in the hands of contractors / sub-contractors	the concerned obligations under the contract are fulfilled or contingencies get decided. However, ICDS III relating to construction contracts, provides for taxation of retention money also on percentage completion basis in a manner that every year part of retention money also becomes taxable. This will result into lot many litigations. Further, application of section 5 takes place first and then section 145.	overcome the taxation of of retentions money/margin money in the hands of contractors / sub-contractors. (SUGGESTION FOR IMPROVING TAX COLLECTION)
102.	Section 148 - Reasons for reopening to be sent along with notice for reopening of assessment	Section 147 empowers an AO to reopen an assessment if he has "reasons to believe" that income has escaped assessment. In practice, the said notice usually does not spell out the reasons in proper detail. The said section does not have any procedural requirements, but a practice has developed and been laid down by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. v ITO [2003] 259 ITR 19 (SC) case, to be mandatorily followed while reopening assessment. Presently notice is issued under section 148. Later, the assessee has to request for the 'reasons for reopening' from the AO. Thereafter the Assessing officer provides the reasoning.	In view of the aforesaid, it is suggested that it would be more appropriate if suitable amendments be made in section 147/148 so as to follow the procedure laid down by Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. v ITO [2003] 259 ITR 19 (SC) ruling i.e. to supply reasons along with notice of reassessment and also to dispose off the objections by a speaking order. (SUGGESTION FOR IMPROVING TAX COLLECTION)
103.	Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Section 155(14) has elapsed) demanded by the Government authorities at a later date	Currently, many government/ semi-government authorities (viz. Mining Department) have been demanding TCS of earlier years for which assessments have already been completed, since they had not collected the TCS in those relevant years. After making payments of TCS the certificates for the same are issued in current year giving reference of expenditure incurred by payer for earlier financial years. As per the provision of section 155(14) "the credit of TDS/TCS certificates is available to assessee within 2 years from the end of the	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. (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX



Sr. No	Section	Issue/Justification	Suggestion
		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.	LAWS)
104.	Section 159 - Hardship in obtaining ‘Legal Heir Certificate’ for the purpose of registering deceased assessee’s legal heir as representative assessee for e-filing of tax returns of a deceased assessee	Section 159(1) provides that <i>“Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.”</i> Further, section 159(3) provides that <i>“The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.”</i> Thus, the legal representative of the deceased assessee needs to comply with various provisions like filing of Return, payment of taxes, complying with assessment proceeding on behalf of the deceased assessee. Filing of tax returns electronically is mandatory for assessee except a few exceptions as provide in Rule 12. The Existing procedure to register oneself as legal representative of deceased assessee for filing return of income of deceased assessee is described in brief as below: a. The legal representative needs to register himself as ‘Legal Heir’ on the E-Filing portal in order to file return of deceased assessee. This is for the period that Income was earned by the deceased but cannot be returned by him	Considering the problems faced as aforesaid, it is suggested that a. That the filing of the documents at (i) to (iii) should be made as sufficient compliance (i.e. Copy of Death Certificate, Copy of PAN of deceased and Self attested PAN copy of the Legal Heir). b. One of the following alternatives be provided in the Act in place of legal heir Certificate: i) Affidavit from the legal heir or, ii) Certificate of nomination from institutions like banks or, iii) Copy of Ration Card specifying the name and relation with the legal heir. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		since he has since passed away. b. Request needs to be made through E-Filing portal for above registration by providing certain details of deceased assessee along with certain specified documents. c. The following are the documents which are to be submitted/uploaded: i) Copy of Death Certificate. ii) Copy of PAN of deceased. iii) Self attested PAN copy of the Legal Heir. iv) Legal Heir Certificate issued by the Court/Local Revenue Authority. or Surviving member certificate issued by the Local Authority. Or Pension Order issued by Central/State Government. Or Registered will. d. On fulfilling the above details, one can submit the request and will be provided an acknowledgement along with a Transaction ID. e. The department would then 'accept/reject' the request based on the details and documents uploaded. Where request has been rejected, department will provide the ground for rejection, which can be viewed by clicking on Transaction ID. 4. All the documents as specified in sub-point 'c' above, are generally available or can be easily obtained except for those specified in (iv). The issues faced for obtaining 'Legal Heir' certificate are as under: a. Obtaining legal heir certificate or Surviving member certificate from Court/ Local revenue authority is very time consuming as well as a cumbersome. b. Pension Order is issued by Central/State Government only to its employees and thus	



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



CHAPTER-XVII

COLLECTION AND RECOVERY OF TAX



PART B-DEDUCTION AT SOURCE

DETAILED SUGGESTIONS

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



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



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



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



Sr. No	Section	Issue/Justification	Suggestion
109.	Section 194A – Need to raise threshold limit from 5,000 to Rs 10,000	The present threshold limit of Rs. 5000.00 for deduction by other than Banks is very old and is too low. This limit of Rs. 5000.00 u/s 194A was fixed long ago, which is as much as 30 years ago. The basic exemption limit has increased multi-fold but this remained at the same level since then. This needs immediate change. Once the limit is raised to Rs 10,000 then there would be two thresholds only u/s 194A i.e 10,000 and 50,000 making compliance easier.	<i>It is suggested to raise the threshold limit of Rs. 5000.00 to Rs 10,000 u/s 194A applicable to deductors other than bank.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
110.	Section 194A - Interest payments to NBFC	Section 194A(3)(iii)(a) provides that the tax on interest other than interest on securities is NOT required to be deducted by a person responsible for paying the same to a resident, if the income is credited or paid to any banking company to which Banking Regulation Act, 1949 applies or any co-operative society engaged in the business of banking (including a co-operative land mortgage bank). It may be noted that Section 194A does not treat Non-Banking Financial Institutions (NBFCs) at par with the Banking companies or Co-operative Banks. Due to this, the middle-class businessmen who have borrowed money from NBFC's are disallowed interest paid on the same due to non-deduction of tax at source under section 194A of the Income-tax Act, 1961. It is suggested that section 194A should not apply to NBFCs as: a) NBFCs principal business	<i>To provide relief to the genuine taxpayers paying interest to NBFC's, it is suggested that the section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies. Further, in order to ensure compliance of the provisions of the Act for timely collection of taxes, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		is of lending money under various products just like Banking Company or a co-operative Bank. b) There is no mechanism for deduction of tax on interest paid by the assessee as the NBFCs collect cheques of EMI for the tenure of loan. c) NBFCs are also regulated by RBI just like Banking Company and a Co-operative Bank. Considering the fact that there is no mechanism for deduction of tax on interest paid by the assessee as the NBFCs collect cheques of EMI for the tenure of loan, the non-compliance of the provisions of this section is inevitable. However, the said provision creates problem for the assessee who has borrowed money as he is unable to claim deduction in respect of said interest due to operation of section 40(a)(ia).	
111.	SECTION 194C – Increase in prescribed limit	Section 194C provides lower ceiling of Rs.30,000/- for a single transaction and Rs.1,00,000/- for aggregate transactions. Enhanced economic activity and the effect of implementation of GST and Reverse Charge Mechanism have brought the transactions under control and within the tax net. After considering the facts, the said prescribed limit seems to be too low.	<i>It is suggested that the limit of Rs.30,000/- may be increased to Rs.75,000/- for single contract transaction and Rs.1,00,000/- to Rs.3,00,000/- for aggregate of contract payments.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
112.	Section 194H – Request to increase TDS	The Digital India programme is a flagship programme of the Government of India with a vision to	<i>It is suggested that TDS exemption limit u/s 194H may be increased to Rs</i>



Sr. No	Section	Issue/Justification	Suggestion
	exemption limit to Rs 40,000	transform India into a digitally empowered society. In order to transform the entire ecosystem of public services, banking etc. through the use of information technology, the Government of India has launched the Digital India programme. One of the key initiatives of the government is to channelize all payments through Digital mode. It has come up with many incentives for using digital mode of payments and with certain dis-incentive for using cash mode of payments. As part of promoting cashless transactions and converting India into less-cash society, various modes of digital payments are available. One of the modes is a point of sale (PoS). It is the place where sales are made. On a macro level, a PoS may be a mall, a market or a city. On a micro level, retailers consider a PoS to be the area where a customer completes a transaction, such as a checkout counter. It is also known as a point of purchase. It is a well-known fact that people still consider cash as the safest way to buy things. Hence, when somebody goes to a small shop, cash is the preferred way of payment. However, some companies are trying to change the way people transact and even on small outlets like Pan-shops, nearby grocery shops, the companies are pushing to transact digitally using e-Wallet.	40,000 in cases of recipients having PAN. It will eliminate the following difficulties / challenges for the Merchants, Companies as well as Income-tax department: - It takes huge amount of calculations and on top of it, compliance of TDS on the small amounts on millions of transactions which is a very cumbersome task and the TDS on the amounts may be in paise as well. With the above volume, filing of TDS Returns and generation of TDS certificates is a challenge; - TDS provisions are applicable once the threshold limit crosses. In the given business scenario, incentives payable to the merchants is based on the business given by the merchants and thus, the projection of incentive payable by the Company is not be possible. If the Company starts TDS deduction before the threshold limit crosses, it will not be acceptable by the merchants; - There are enormous number of transactions with these small outlets /



Sr. No	Section	Issue/Justification	Suggestion
		It requires a lot of push as this entails a behavioral change for the customer who needs to change his preferred mode of payment from cash to digital mode as well as for the merchant who is also supposed to accept payments digitally instead of traditional cash. While convenience and accountability is the key to digital payments, for the customer and merchants to change their behavior, government is giving incentives. Similar incentives are proposed by the private players also. These small incentives will go a long way to make behavioural changes. It is to be noted here that there are voluminous transactions, but the incentive in absolute amount is very low. The number of merchants to be benefitted from the incentive programme is also huge, however, the amount payable to any single merchant may not be large. These incentives may be termed as "Commission" under the Income-tax Act, 1961 and thus, applicability of TDS provisions will arise.	<i>merchants, due to which the exercise of Income-tax department also gets burdened (i.e., humongous data in the TDS return, issuance of TDS certificates, transactions in Form 26AS). The administrative burden on the TDS officers also increases for the verification / reconciliation of such humongous data.</i> (SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
113.	Section 194-IA-Issues	The provisions for tax deduction is causing hardship to those sellers who claim full capital gains exemption by investing the capital gains or the net consideration, as the case may be, in the manner provided in section 54, 54F, 54EC etc., since in such cases, there would be no tax liability on account of capital gains. Further, for the purposes of section 54F and 54GB, the entire net consideration is required to be invested, which would pose a difficulty, since tax would	<i>It is, therefore, suggested that section 197A may be amended to permit the assessee to make an application to the Assessing Officer for issuing a certificate for no deduction of tax or deduction of tax at a lower rate. In the alternative, the seller may be permitted to give a declaration to the</i>



Sr. No	Section	Issue/Justification	Suggestion
		already have been deducted from the net consideration.	Assessing Officer and furnish a copy of the same to the buyer. (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
114.	Section 194-IA – Reduction in threshold limit to Rs. 30,00,000	As per the provisions of section 194-IA, tax is to be deducted @ 1% on consideration for transfer of immovable property, other than agricultural land. However, no tax is to be deducted if the consideration for transfer of immovable property is less than Rs. 50 lakhs. Due to this high threshold of Rs. 50 lakhs, some of the unscrupulous assesseees are getting the property registered at just under Rs. 50 lakhs of sale consideration to avoid TDS u/s 194-IA. Also, as per Income-tax Rules, any sale purchase of property whose stamp duty value exceeds Rs. 30,00,000 needs to be reported in Statement of Financial Transaction.	It is suggested that section 194-IA be amended so as to reduce the threshold limit to deduct tax from Rs. 50 lakhs currently to Rs. 30 lakhs. (SUGGESTION FOR IMPROVING TAX COLLECTION)
115.	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	It is suggested that section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source. (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		respect of director's remuneration. This unintended inequity may be removed.	
116.	Section 194J – Clarification for rate of TDS	Section 194J was amended by the Finance Act, 2020 to provide for reduced rate of TDS @ 2% instead of the normal rate of 10% in the following cases: • Payment for fees for technical service, not being a professional service. • Payment for royalty, where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films. As per the memorandum explaining the provisions of the Finance Bill 2020, the purpose of the amendment is to reduce litigation where in certain cases, the taxpayers used to deduct tax @ 2% under section 194C while the tax authorities used to claim that the deduction should have been made @ 10% under section 194J. However, now new dispute is likely to arise as to whether a particular payment is 'fees for technical services' or 'fees for professional services'. While the terms "fees for technical services" and "professional services" are defined separately, the issue may arise while interpreting the term managerial, technical and consultancy services included in the definition of "fees for technical services" vis-a-vis terms such as 'engineer', 'information technology'	<i>It is suggested to issue suitable clarification as regards the nature of payments that would be subject to TDS @ 2% or 10%.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		and 'technical consultancy' included within the definition of "professional services". Services falling under these terms can be overlapping. Therefore, the amendment is subject to different interpretations. Issue Interpretation of 'technical services' vis-à-vis 'professional services'.	
117.	Section 194N - Practical difficulties to be faced and clarifications required regarding implementation of provision of TDS @ 2% on cash withdrawals exceeding Rs 1,00,00,000	The Finance (No. 2) Act, 2019 has introduced a new section 194N which is further substituted by the Finance Act 2020 in order to discourage cash transactions by levying TDS @ 2% on cash withdrawals exceeding Rs 1 crore from banks including co-operative banks or post offices subject to certain exceptions as provided therein. There are certain concerns with regard to implementation of provisions which needs to be addressed. Issue I: Minor inconsistency between budget speech and finance bill We refer to para 126 of the budget speech (relevant extract reproduced below): "To promote digital payments further, I propose to take a slew of measures. To discourage the practice of <u>making business payments</u> in cash, I propose to levy TDS of 2% on cash withdrawal exceeding ` 1 crore in a year from a bank account." [emphasis supplied] The Hon'ble FM referred to	<i>(i) It is suggested that the intent expressed in the budget speech w.r.t discouraging making of business payments in cash for introducing section 194N may be suitably incorporated in the text of section 194N i.e. withdrawals from only current account may be taken into account for TDS purposes. This will also align with provisions of seventh proviso to section 139(1) (mandatory ITR filing for deposits exceeding Rs 1 crore in current account).</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		discouraging 'business' payments in cash while introducing provisions of section 194N. Payments for business are usually made from 'current account' maintained with banks. However, the text of the section 194N as per Finance (No. 2) Act, 2019 levies TDS on withdrawal from all types of accounts, be it current or saving or any other account maintained with the specified authority. The inconsistency between budget speech and the finance Act needs clarification. Issue II: Term 'recipient' may not convey the right meaning Relevant provision of section 194N reads as under: "Every person, being,— (i) a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a co-operative society engaged in carrying on the business of banking; or (iii) a post office, who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, <u>to any person (herein referred to as the recipient)</u> from <u>one or more accounts maintained by the recipient</u> with it shall, at the time of payment of such sum, deduct an	(ii) It is suggested that the term 'recipient' may not be required in section 194N and hence, following change may be made: "who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, to any person (herein referred to as the recipient) from an account maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent. of sum exceeding one crore rupees, as income-tax" (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		amount equal to two per cent. of sum exceeding one crore rupees, as income-tax.” Referring to the term ‘recipient’ as used above, it may be noted that the said term is not defined anywhere. Also, reference to ‘any person’ is restricted to the ‘recipient’. It is stated that the account is to be maintained by the recipient. It may be possible that the ‘recipient’ and the ‘account holder’ are two different persons. However, the intent of the amendment seems to identify ‘recipient’ as an account holder. If it is so, then if a person other than account holder withdraws amount; will this section be not applicable, or TDS would be levied, needs to be clarified.	
118.	Section 194N - Payment of certain amounts in Cash	Currently, the Infrastructure Industry is playing a major role to build the Nation by creating infrastructural facilities wherever required for the public utility viz., Development of Roads including National Highways, Irrigations, water supply/Drainage, Rural Housing, Hospitals & Electricity, etc. In most occasions, the contractors take up the projects in most remote areas where, even no basic facilities are available viz., Road connectivity, Banks, Medical and marketing facilities, etc., and they have to create everything on their own for execution. Keeping in view of the fixed time line for completion of projects, the contractors shall have to mobilize/procure most of the required inputs i.e. Metal, Sand,	<i>Keeping in view of the aforesaid, it is suggested to exempt the Infrastructure Industry Sector for at least 10 years from the provisions of section 194N of the Income-tax Act, 1961, in order to overcome from their cash flow crunch and complete the projects in time without any hinderance.</i> <i>(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



Sr. No	Section	Issue/Justification	Suggestion
		Mud Bricks, allied items, engaging labour force for both skilled & unskilled, etc., from the unorganized sector by paying cash only due to lack of resources in those areas. Further, it is submitted that with an aim to discourage cash transaction and move towards a cashless economy, TDS @ 2% on cash payment in excess of Rs.1.00 crore in aggregate made during the year, by a Banking company or Cooperative Bank or Post Office, to any person from recipient is applicable now. The provision under Section 194N which has been introduced, at first glance, appears to address the need of the hour and remove the menace of black money and to aid a cashless economy. In this regard, it is further submitted that though the work done bills were submitted for payment, contractors are not getting their payments timely from the respective government departments with one reason or other and their huge capital amount is held up for quite long time, apart from this additional 2% TDS on cashless transactions. Due to block up of huge amount they are facing lot of financial problem and not able to achieve the progress in timely completion of the projects. Threshold limit is also fixed without considering the volume of transactions and business involved.	
119.	Section 194-O – Practical	As per section 194-O of the Act, an e-commerce operator is liable to	<i>It is suggested to make suitable amendments to</i>



Sr. No	Section	Issue/Justification	Suggestion
	implementation issues	deduct tax at source @ 1% (5% if PAN/Aadhar is not furnished) from payments made to an e-commerce participant (resident in India) in respect of the sale of goods or provision of services facilitated by the e-commerce operator through its digital or electronic facility or platform. The tax is required to be deducted at the time of credit of the amount of sales and/or provision of services to the account of the e-commerce participant or at the time of payment thereof to such e-commerce participant, whichever is earlier. Section 194-O also mandates the e-commerce operator to deduct and pay tax on behalf of the e-commerce participant, even in case the e-commerce participant is receiving full payment directly from the customer. In this scenario, the e-commerce operator will face difficulties in recovering TDS from the e-commerce participant. Cost of such TDS will have to be borne by the e-commerce operator, if the same is not reimbursed by the e-commerce participant. Quite often, e-commerce operators charge delivery fee and sometimes offer discount on the products sold by the e-commerce participants. For example, a mobile company as an e-commerce participant offers mobile phone at INR 10,000 as per the list price and the e-commerce operator charges a delivery fee of INR 100, thereby making the total amount payable by the customer as INR 10,100. As a promotional offer, the e-commerce operator offers discount of INR 500 on the list price	address the highlighted issues. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		thereby offering the mobile phone at INR 9,600. The said discount is compensated by the e-commerce operator to the e-commerce participant. The issue arises as to whether the payment made by the e-commerce operator to the e-commerce participant should be liable for TDS on INR 10,100, even if only INR 9,600 is received from the buyer. Issue Issues arising on account of practical implementation of provisions of section 194-O.	
120.	Section 194-O – Clarification w.r.t. GST	Section 194-O of the Act provides that the taxes are to be withheld on the gross amount of the sales. It is worthwhile to note here that vide Circular No.23/2017 dated 19 July, 2017, CBDT has clarified that no taxes shall be withheld on the portion of 'GST on services' if it is indicated separately in the invoice. Further, while Circular No. 17 of 2020 has clarified regarding exclusion of GST for the purpose of section 206C(1H) of the IT Act, it is silent for section 194-O of the IT Act. Issue Section 194-O of the Act provides that the taxes are to be withheld on the 'gross amount of sale of goods or services'. The term 'gross amount of sale of goods or services' is not defined in the section. Issue arises as to whether the tax under section 194-O of the Act is to be held on the gross sales plus GST amount?	Considering the fact that the CBDT Circular provides that no tax is required to be withheld on "GST on services" and not on "GST on goods", taking a position that no tax is to be withheld on the GST on goods may entail litigation. Therefore, a clarification is required on the above either by CBDT or a suitable amendment in the section 194-O of the Act defining "gross amount of sale of goods or services" is useful to avoid tax on tax i.e. GST amount on sale of goods. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
121.	Section 197 – Reduced rate of TDS for Joint	For larger projects, the Concerns are forming Joint Venture (JV). The entire projects and income/losses	It is suggested that for Joint Venture concerns, a reduced rate of TDS may



Sr. No	Section	Issue/Justification	Suggestion
	Venture	are shared by JV partners. Thus, JV is not making any profit. But TDS is deducted on the entire amount which leads to a huge refund of tax.	<i>be prescribed on a predefined method to avoid / delay in getting certificates under section 197.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
122.	Section 197A - TDS on non-availability of PAN Cases	In non-availability of PAN cases, the prescribed rate of TDS is @ 20% or higher rate as applicable. In Infra Industry, the mobility of labour force is facing hurdles in providing PAN. It impacts on the Construction concerns at higher cost for procedural lapses.	<i>It is suggested that provisions of section 197A may be extended to the persons covered under section 194C who have income below taxable limit and can give a proper declaration.</i> <i>Further, section 206AA may be amended to exclude quoting of PAN for those persons having income below taxable limit.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
123.	Section 197A – Certain assessee may be allowed benefit	Section 197A deals with provisions for non-deduction to be made in certain cases. Further, Rule 29C authorizes for furnishing of Form No. 15G/H in such specified cases so that no tax is deducted at source. However, currently in most cases only individuals and HUFs are able to claim the benefit of section 197A. There are certain other assessee who are made to file ITR forms to	<i>It is suggested that section 197A may be suitably amended so that certain assessee like those registered under section 12A can also file Form No. 15G/H (via suitable amendment in rule 29C).</i> (SUGGESTIONS FOR RATIONALIZATION OF



Sr. No	Section	Issue/Justification	Suggestion
		claim refund although in most cases either income is exempt or below the minimum threshold limit applicable to tax.	THE PROVISIONS OF DIRECT TAX LAWS)
124.	Section 197A - Rationalizing TDS applicability on Merchant Discount Rate ('MDR')	As part of promoting cashless transactions and converting India into less-cash society, various modes of digital payments are available. These modes are regular banking channel which is Credit Card and Debit Card, where generally, Bank is the merchant acquirer. In the light of government's push on digital payments, the concept of Merchant Aggregator/Acquirer has come up where the Merchant Aggregator is not the bank, but a separate entity. Merchant Aggregator acquires various merchants and ties up with banks for processing of payments. The Merchant Aggregator collects money from banks on behalf of its merchants and then makes the final settlement with its merchants. The Merchant Aggregators are integral part of the overall Digital Payment system which act as a conduit between customers, bank and merchant. These Merchant Aggregators collect money from customer's bank/PPI Wallet and make payment to merchants. In a move aimed at encouraging the transition towards a cashless economy, the CBDT has exempted some payments made to banks and payment service providers from deducting tax at source. These payments include credit card or debit card commissions for transactions between a merchant establishment and the bank. CBDT vide its Notification No. SO	<i>(i) It is suggested that MDR retained by bank from Merchant Aggregator and by Merchant Aggregator from Merchant Establishment may be exempted from TDS.</i> <i>(ii) The exemption u/s 197A(1F) may be extended to cases:</i> - <i>where the commission is retained by the bank while making payment to Merchant Aggregator (as the Income-tax department may consider Merchant Aggregator on a different footing with Merchant Establishment); and</i> - <i>where the commission is retained by the Merchant Aggregator while making payment to Merchants</i> <i>The above suggestion will remove the deterrent for merchant aggregators as they will be in line with merchant establishment. This move will encourage online transactions by reducing the compliance burden as the merchant establishment will not have to deduct TDS before making the payment to the Merchant</i>



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



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



Sr. No	Section	Issue/Justification	Suggestion
		companies on the discount extended to the prepaid distributor. However, the tax authorities have adopted a contrary position and have been holding that discount extended by the telecom companies to the prepaid distributors as commission and thus, provisions of section 194H would apply. This has resulted in long drawn litigation and multiple TDS for telecom companies and also distributors.	
127.	Section 206C – Concerns arising due to inclusions in TCS provisions to be addressed	Clarification regarding the amount/sale consideration on which TCS is to be collected/charged under provisions of section 206C(1H). Section 206C(1H) provides that every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding Rs 50,00,000 in any previous year shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 % of the sale consideration. Clarification is required in case of receipts when sale and purchase is made from a same person. There is a possibility that certain two assesseees say ‘X’ and ‘Y’ are buyer and seller of each other’s goods. Eg let’s assume X has sold goods worth Rs 1 crore to Y and Y has also sold some other goods worth Rs 80 lakhs to X. Now, in this case, clarity is required regarding the amount on which tax is to be	<i>It is suggested that suitable clarification be issued, or legislative amendment be made so as to clearly specify the amount on which tax is to be collected by the seller especially in a case when sale and purchase takes place to and from a same person.</i> <i>(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)</i>



Sr. No	Section	Issue/Justification	Suggestion
		collected at source by seller X i.e. on sale consideration of Rs 1 crore or net remittance of Rs 20 lakhs or not required at all as receipt during the year is less than Rs. 50 lakhs.	
128.	Section 206C(1H) – certain other concerns	Issue I While section 206C(1H) of the Act is inserted, the provision does not define key terms such as “goods”, “turnover”, etc. and this has resulted into interpretational issues. The term ‘goods’ is defined under various acts (such as Sale of Goods Act, GST Act etc) and hence will lead to litigation. Issue II While the key terms are not defined, CBDT has issued a circular clarifying various queries. One of the clarifications given by the CBDT is that the provision of section 206C(1H) would not apply to listed securities. Thus, it appears that unlisted securities could get covered by section 206C(1H) of the IT Act. Only listed securities have been carved out of section 206C(1H).	<i>(i) It is suggested that key terms referred in section 206C(1H) are defined to mitigate the risk of protracted litigation.</i> <i>(ii) It is suggested that securities whether listed or not may be made out of the purview of section 206C(1H).</i> (SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)



PART C-ADVANCE PAYMENT OF TAX

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
129.	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 may be allowed to pay full amount in the last instalment.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



PART G-LEVY OF FEE IN CERTAIN CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
130.	Section 234C – Interest due to MAT application	234C levies interest where advance tax installments are not deposited as per prescribed percentage. Income from capital gain where issue of failure to estimate such income might arise, current law allows to deposit the advance tax on such income without interest in remaining installments. However, where assessee is subjected to MAT for any previous year and profit on sale of capital asset included in profit and loss account also be subjected to MAT then section 234C does not provide specific exclusion from levy of interest on account of failure to estimate such income. Even if such income has accrued to the assessee in the month of March and assessee is subjected to MAT provisions, CPC determines the demand and calculate interest as shortfall in advance tax payment has arisen from 1st installment itself. It would reduce the unnecessary demand determined against the assessee.	<i>It is suggested that profit on sale of capital asset recognised in books shall be treated in parity with income from capital gain and accordingly, interest u/s 234C may not be levied by the CPC.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion								
131.	Section 234C – Dividend Income	Section 234C provides for interest upon default/delay in quarterly payment of advance tax instalment, except for relaxation provided in case of income under the head Capital Gains. However, no such relaxation is available for dividend income, though it is equally difficult for a shareholder to estimate the annual dividend income. Issue Relaxation to pay Advance tax on Dividend Income.	<i>It is suggested that relaxation to pay advance tax may be extended to dividend income as well.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)								
132.	Section 234E – Day wise slab	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>Period of Default</th><th>Max. Fees u/s 234E</th></tr><tr><td>Upto 15 Days</td><td>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td></tr><tr><td>From 15 Days to 1 Month</td><td>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td></tr><tr><td>From 1 Month Onwards</td><td>Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.</td></tr></table> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)	Period of Default	Max. Fees u/s 234E	Upto 15 Days	Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.	From 15 Days to 1 Month	Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.	From 1 Month Onwards	Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.
Period of Default	Max. Fees u/s 234E										
Upto 15 Days	Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.										
From 15 Days to 1 Month	Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.										
From 1 Month Onwards	Rs. 1000/- + Rs. 200/- per day or tax amount, whichever is higher, but subject to maximum of Rs.20,000/-.										



Sr. No	Section	Issue/Justification	Suggestion
133.	Section 244A - Rate of Interest on Refunds	Government collects interest @ 1% for every month or part of a month for defaults in payment of advance tax under section 234B. But it allows only 0.5% for every month or part of a month for the refunds granted by the Government.	<i>It is suggested that a unified rate of interest is to be prescribed both for delayed tax payments and refund cases.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



CHAPTER XX

APPEALS & REVISION



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
134.	Section 246A – Necessary amendment required enabling filing of Appeal against penalty imposed by Assessing Officer under section 271J	Section 246A provides that any assessee aggrieved by any of the orders mentioned therein may appeal to the Commissioner (Appeals). The Finance Act 2018 has amended clause (a) of section 253(1) so as to make an order passed by a Commissioner (Appeals) under section 271J also appealable to the Appellate Tribunal. This amendment is applicable from 1st April, 2018. Issue: The said amendment in section 253(1) allows an appeal to be filed before ITAT, if the order imposing penalty is passed by CIT(A). However, if the order is passed by Assessing Officer, the same would not be appealable either before CIT(A) u/s 246A or before ITAT u/s 253(1), thereby leading to denying principles of natural justice. This may be an unintended omission.	<i>It is suggested that necessary amendment may be made in section 246A so as to make an order passed by an Assessing Officer under section 271J appealable to the Commissioner (appeals) u/s 246A.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
135.	Section 254 – Condition of pre-deposit of 20% of tax etc. for granting stay by the ITAT to be reconsidered	The Finance Act 2020 amended section 254 inter alia to provide that ITAT may grant stay under the first proviso subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.	<i>It is suggested that amendment in section 254 imposing condition of pre-deposit of at least 20% of tax, interest, fee, penalty etc for granting of stay by the ITAT be omitted. In case it is not omitted, the rate may be reduced to 5%.</i> (SUGGESTION FOR



		Issue	<i>RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
		Considering the current slowdown of economy and its impact on businesses, the requirement of pre-deposit of 20% of tax, interest, fee, penalty etc as a condition for granting stay by the ITAT is very harsh. It would lead to cash flow issues for the assesseees which may affect carrying on of business. It would be extremely difficult to deposit such high amount of pre-deposit, especially in case of high-pitched assessments. ICAI has recently represented the hardships faced by concerned assesseees against the high pre-deposit demanded by AOs vide ICAI/DTC/2019-20/Rep-21, dated 9th January 2020 submitted to Chairman, CBDT. Working capital of such assesseees gets locked up for getting stay of demand (especially in case of high pitched assessments) and their businesses suffers adversely due to lack of adequate working capital. It would result in a substantial financial and other hardship to the assesseees.	



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
136.	Section 269ST - Issues(i)	The expression, 'amount' has been used u/s 269ST whereas the expression 'sum' has been used u/s 271DA, which may create confusion and result in avoidable litigation.	<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> (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
	(ii)	In Note no. 83 of notes on clauses to the Finance Bill, 2017, the following amounts/ nature of transactions are excluded: - "Any receipt from sale of agricultural produce by any person being an individual or Hindu Undivided family in whose hands such receipts constitute agricultural income " This transaction has been inadvertently omitted from the list of exclusions in section 269ST.	<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 exclusion be not restricted only to individual and HUF but also to other assessee's also who are deriving agricultural income only.</i> (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)



CHAPTER XXI

PENALTIES IMPOSABLE



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
137.	Section 270A inserted to provide for levy of penalty in case of 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> (SUGGESTION FOR IMPROVING TAX COLLECTION)
	b) Penalty for under-reporting of income	There are certain concerns arising out of the provisions of new section 270A, due to which it is likely that the implementation may not yield the desired result and fresh litigation is likely to arise while interpreting the new provision.	<i>Without prejudice thereto, with regard to this methodology of levying penalty, the following suggestions may be considered.</i> • <i>By way of express requirement, the Assessing Officer may be required to</i>



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



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



Sr. No	Section	Issue/Justification	Suggestion
		immunity from penalty and prosecution under section 270AA in case order specifies that he has not misreported the income.	
	d) Mere making of a claim which is not sustainable in law would not tantamount to furnishing inaccurate particulars for attracting levy of penalty	Scope of penalty under section 270A has been widened and it would now include within its scope, claims made by the assessee but disallowed by the Assessing Officer. Where no information given in the return is found to be incorrect or inaccurate, and the assessee has disclosed all material facts relevant for assessment, he cannot be held guilty of furnishing inaccurate particulars. This principle of law has been settled by the Apex Court ruling in Reliance Petro Products' case. Therefore, mere making of a claim which is not sustainable in law would not tantamount to furnishing of inaccurate particulars for attracting levy of penalty. However, such cases are now to be included within the ambit of under reported income under the new section 270A and penalty would be attracted @ 50%.	<i>It is suggested that section 270A may be suitably amended so that penalty is not automatically attracted for merely making of a claim which is not sustainable in law.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
138.	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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		(b) Also, there is no guarantee that appeal against quantum order with application for condonation of delay after rejection of application for immunity, will be admitted.	<i>Suitable provision may be inserted.</i> (SUGGESTION FOR IMPROVING TAX COLLECTION)
139.	Section 271AAB - Need to simplify penal provisions	- Amended Section 271AAB provides for imposition of penalty @ 10% on undisclosed income found during the course of search and admitted at the stage of search subject to fulfilment of other specified conditions in section 271AAB(1A)(a) 60% penalty is to be imposed in other cases u/s 271AAB(1A)(b). - The above system of penalty is very complex to implement in reality. In search cases, penalty should ideally be the same irrespective of the time of admission/declaration by the culprit assessee. Assessing officers sometimes puts undue pressure on the 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.	<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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
140.	Section 271AAB - Penalty where search has been initiated	Section 271AAB(1) (till 15.12.2016) provides for imposition of penalty @ 10% on undisclosed income found during the course of search and admitted at the stage of search. Undisclosed income not admitted	<i>Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied only under clause (b) of section 271AAB(1A), and not in</i>



Sr. No	Section	Issue/Justification	Suggestion
		at the stage of search but disclosed in the return of income filed after the search to attract penalty @ 20%. These are covered under clauses (a) and (b) of section 271AAB. In other cases, i.e. cases covered under clause (c), penalty to be imposed @ 60% of undisclosed income. Aforesaid provisions of section 271AAB are applicable till 15.12.2016 due to insertion of sub-section (1A) vide the Taxation Laws (Second Amendment) Act, 2016. Section 271AAB(1A) provides penalty @ 30% under sub-clause (a) and 60% under sub-clause (b). Sub-section (3) provides that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied under this section. However, it may not be justified to execute prosecution proceedings where a person has disclosed such income in the course of search or before filing his return of income. Therefore, the prosecution provisions should be made applicable only in respect of cases covered under clause (b).	<i>respect of cases covered under clause (a).</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
141.	Section 271AAD – Penalty for fake invoice – Stringent provision to be relaxed	The Finance Act 2020 inserted a new section 271AAD so as to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to	<i>It is suggested that:</i> <i>(i) The section 271AAD(1)(i)/(ii) be suitably amended as below:</i> <i>“271AAD. (1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account</i>



Sr. No	Section	Issue/Justification	Suggestion
		evade tax liability. (A) Amendment in section 271AAD(i) requiring penalty to be attracted only when false entry is made with an intent to evade tax liability The provision may be prone to misuse by the tax authorities. Clause (i) of section 271AAD(1) mentions only 'a false entry' without the specific requirement that such false entry 'which is relevant for computation of total income of such person, must have been made with an intent to evade tax liability for penalty to be attracted. There is a possibility of a false entry due to recasting of books and/or errors/omissions. Since 'false entry' has been inclusively defined in the Explanation to proposed section 271AAD, there is a possibility that the AOs may invoke this penalty in respect of cases not specifically listed in clauses (a) to (c) thereunder. This has created unrest in the minds of honest taxpayers also. Therefore, the definition must be an exhaustive one and penalty should be attracted only when such entry has been made with an intent to evade tax liability. (b) Consequential amendment required in section 273B as a 'reasonable cause' for penalty imposed under section 271AAD	<i>maintained by any person there is—</i> <i>(i) a false entry; or</i> <i>(ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry."</i> <i>(ii) The definition of "false entry" in the Explanation to section 271AAD(1) should be an exhaustive one and not inclusive, in order to clearly define the scope of the provision and avoid unnecessary litigation.</i> <i>(b) It is suggested that section 273B be amended so as to include within its scope,</i>



Sr. No	Section	Issue/Justification	Suggestion
		Section 273B provides for cases/provisions wherein penalty is not imposable if the assessee proves that there was reasonable cause for the said failure. The Finance Act 2020 has not included section 271AAD within the scope of section 273B. Every assessee deserves a reasonable opportunity of being heard especially in case where such harsh penalty is imposed. The very purpose of enacting section 273B is to allow assessee to explain his case and if reasonable cause for non-compliance is found, such penalty is not to be imposed. Accordingly, section 273B may be amended to include within its scope, penalty to be imposed under section 271AAD also	<i>penalty imposable under section 271AAD so that such penalty may not be imposed in case assessee has a reasonable cause for 'false entry' and/or 'omission' of entry.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
142.	Rationalization of Section 271D & 271E	As per section 271D & 271E, if a person accepts/repays a loan or deposit or specified sum/advance, as the case may be in contravention with the provisions of section 269SS/269T, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or 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	<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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		provisions u/s 269SS & 269T.	
143.	Section 271FA Clarity required regarding appealability of penalty order	Section 271FA provides that if a person who is required to furnish the statement of financial transaction (SFT) or reportable account (RA) under section 285BA(1), fails to furnish such statement within the prescribed time, then the income-tax authority prescribed under section 285BA(1) may direct such person to pay penalty of five hundred rupees for every day of default. Prescribed Income-tax authority as per section 285BA(1) is Director of Income-tax (Intelligence and Criminal Investigation) {DIT} or the Joint Director of Income-tax (Intelligence and Criminal Investigation) as per Rule 114(4)(a). Further, section 246A(1)(q) provides that any assessee or any deductor or any collector aggrieved by an order imposing a penalty under Chapter XXI may appeal to the Commissioner (Appeals). Due to certain conflicting judicial decisions, an issue has arisen regarding the authority to whom an appeal shall lie in case of penalty order passed under section 271FA by DIT. As per <i>DIT v Ravi Vijay</i> [2012] 25 taxmann.com 176 (Raj.), the Rajasthan High Court has held that an appeal against order of penalty passed under section 271FA by Director, who holds rank of a Commissioner, is maintainable before	<i>It is suggested that an amendment be made in relevant sections (246A or 253) to clearly specify the authority to whom an appeal may lie against an order passed by DIT under section 271FA.</i> (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)



Sr. No	Section	Issue/Justification	Suggestion
		Commissioner (Appeals) with reference to section 246A(1)(q). Similar view is supported in <i>SRO, Meppayur-Kozhikode v DIT [2013] 37 taxmann.com 36 (Cochin - Trib.)</i> wherein it was held that where Director of Income-tax (Intelligence) levied penalty under section 271FA upon assessee, appeal against impugned order was not maintainable before Tribunal. Similarly, in <i>the District Co-operative Central Bank Ltd., R.R. Peta, Eluru, W.G. District v DIT ITA Nos. 576 to 578/VIZ/2018</i>, the Visakhapatnam Bench held that penalty order under section 271FA is an appealable order before CIT(A). However, Lucknow bench in <i>Raibareilly District Co-operative Bank Ltd. v DIT [2015] 54 taxmann.com 382 (Lucknow - Trib.)</i> held that appeal against an order of Director of Income-tax passed under section 271FA is to be filed before Tribunal who is higher in rank and not before Commissioner (Appeals) who is equivalent in rank with Director of Income-tax. The aforesaid view is also supported by the Hyderabad Bench in <i>the Nizamabad District Cooperative Central Bank Ltd, Nizamabad v DIT ITA Nos.1291 to 1296/Hyd/2017</i>, wherein it held that ITAT is not the forum to entertain the appeal against the penalty order under section 271FA. In order to reduce litigation with regard to this provision,	



Sr. No	Section	Issue/Justification	Suggestion
		clarification is sought on the aforesaid issue.	
144.	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 is suggested that: <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> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		It may cause genuine hardship to the deductees as they would not be able to verify the TDS/TCS credited to their account, for payment of self-assessment tax before the due date of filing of return of income. Therefore, it is felt that penalty provisions should be attracted if such statements are not filed before due date of filing return of income. Further, Section 271H provides for the minimum and maximum penalty, within which range, penalty can be imposed. The discretionary powers provided to the Assessing Officer in levying a penalty ranging from Rs.10,000 to Rs.1,00,000 may lead to hardship to the assessee. Discretion element in levying penalty should be removed. Penalty may be prescribed having regard to quantum of default and the period of delay. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.	
145.	<i>Genuine hardship faced by tax deductors on account of provisions of section 276B of the Income-tax Act, 1961 attracting</i>	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	<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.</i>



Sr. No	Section	Issue/Justification	Suggestion
	prosecution proceedings for delay in remittance of tax to the credit of the Central Government	government dues unjustly. However, at ground level implementation, notices are being issued for initiation of prosecution proceedings under section 276B even in cases where tax deductors have deposited the tax deducted by them voluntarily after the stipulated time but before any notice has been served upon them. This may be due to the modified guidelines issued in 2013 for identification of cases for initiating prosecution, wherein the criterion of minimum retention period of 12 months has been dispensed with. However, initiation of prosecution proceedings in cases of voluntary deposit of TDS after the stipulated time but before service of notice is causing undue hardship to genuine tax deductors. Voluntary remittance of TDS before issue of notice clearly indicates the absence of any malafide intention on the part of the tax deductors to retain the taxes due to the government. The tax deductors are, in any case, being subject to higher interest @ 1.5% per month or part 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	Further, certain threshold limits may be prescribed to avoid genuine errors in estimations. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		that the notices for prosecution are issued on the basis of these information provided by the tax deductors in their TDS statements. It is a settled law that prosecution proceedings are appropriate only in cases where deductors deliberately do not deposit the TDS, since Mens rea or a guilty mind is a sine qua non for attracting prosecution provisions. In this regard, it may be noted that the erstwhile service tax law which provided for a threshold limit of Rs.2 crores for initiating prosecution proceedings in case of failure to pay service tax collected to the credit of the Central Government within a period of 6 months from the date on which such payment becomes due. This implies that only if the service tax collected but not remitted within the prescribed period exceeds Rs. 2 crores, prosecution provisions would be attracted. However, section 276B of the Income-tax Act, 1961 neither prescribes any threshold limit beyond which the prosecution provisions thereunder 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.	
146.	Section 276C	Section 279 of the Companies	<i>It is suggested that suitable</i>



Sr. No	Section	Issue/Justification	Suggestion
	- Withdrawal of cases initiated against limited companies after winding up order	Act 2013 provides for stay of suits etc. against a limited company after passing of winding up order. It is apparent that after passing of such order, the Directors of the company will have no powers to deal with the properties of the company. But unfortunately, it has been observed that cases have been initiated u/s 276C(2) of Income-tax Act for non-payment of tax by passing ex-parte orders u/s.144/147 of Income-tax Act against the companies and their directors even after the appointment of Official Liquidator and passing of Winding up Order.	<i>instructions may kindly be passed to the appropriate authorities by way of CBDT Circulars/ notifications/amendments etc. to kindly withdraw such cases to save the time of the courts and harassment of the directors of the companies under winding up.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
147.	Section 276CC – Amendment w.r.t. clarification regarding inclusion of amount of advance tax paid and tax collected at source may be made applicable with retrospective effect	The Finance (No. 2) Act, 2019 amended section 276CC so as to make the legislative intent clear and to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability. The aforesaid amendment is made applicable w.e.f. 01.04.2020. Since it is a clarificatory amendment as is clear from the Explanatory Memorandum, it should ideally be made applicable from a retrospective date so as to provide the benefit of clarification made to existing cases that are going on.	<i>It is suggested that the amendment in section 276CC made vide the Finance (no. 2) Act, 2019 w.r.t. calculation of tax payable to be determined after reducing tax collected at source and self-assessment tax be made applicable from a retrospective date being in the nature of clarification.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
148.	Chapter XXII - Prosecution	In recent times, there is a spurt in prosecution proceedings under the Income-tax law. Prosecution	<i>It is suggested that in case tax and due interest is paid by the assessee under Income-</i>



Sr. No	Section	Issue/Justification	Suggestion
	<i>proceedings not to be imposed in case tax and interest paid</i>	proceedings are governed by Chapter XXII of the Income-tax Act, 1961. It causes some serious hardships to the concerned assessee. In case tax and due interest is paid, currently prosecution proceedings still take place against the assessee although revenue is in no loss.	<i>tax Act 1961, then prosecution proceedings may be dropped subject to certain exceptions as may be appropriately specified.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>
149.	<i>Initiation of prosecution</i>	ICAI welcomes the CBDT Circular No. 24/2019 dated 09.09.2019, which considered the issue of premature initiation of prosecution i.e. before the issue is tested in appellate proceedings and CBDT has provided specifically that the prosecution complaint should not be launched unless penalty is confirmed by the Income Tax Appellate Tribunal. The said Circular broadly states that prosecution can be launched only in following cases: 1. If tax sought to be evaded is more than Rs.25 Lakhs and 2. Prosecution should be launched only after the penalty is confirmed by the ITAT 3. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the offence has to be proved beyond reasonable doubt. To ensure that only deserving cases get prosecuted, the CBDT also instructed that prosecution may be initiated only with the previous administrative approval of the	<i>It is suggested that CBDT should issue a clarification that the said Circular will apply to all matters which are pending in Courts and suitable clause to be inserted for withdrawals of the complaints already filed.</i> <i>(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)</i>



Sr. No	Section	Issue/Justification	Suggestion
		Collegium of two CCIT/DGIT rank officers as mentioned in Para 3 of the said Circular. This Circular is curative, clarificatory and remedial in nature and it ought to be given retrospective effect and apply to all pending cases where the complaint is filed and should not be restricted only to those pending cases where complaint is yet to be filed. It is a settled law that a curative, clarificatory and remedial amendment must be given retrospective effect, as held in following judicial pronouncements: i) When a provision is inserted/deleted to remedy unintended consequences it should be given a retrospective effect - CIT vs. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC). ii) When a provision is inserted/deleted so as to mitigate hardship caused to the assessee, it should be given retrospective effect - CIT vs. Calcutta Export Company [2018] 404 ITR 654(SC).	



CHAPTER XXIII

MISCELLANEOUS



DETAILED SUGGESTIONS

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



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



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



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



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



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



			of MAT. (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
153.	Conversion of convertible notes into shares	Section 47(x) exempts conversion of bonds or debentures or debenture-stock or deposit certificate in any form, into shares or debenture of that company, from capital gains tax liability. However, the conversion of Convertible Notes (CNs) issued by an Indian start-up into shares or debentures is not specifically exempted.	<i>Indian start-ups were allowed to issue CNs to resident individuals. RBI has permitted a person resident outside India to purchase CNs issued by an Indian start-up company for INR 25 lakhs or more in a single tranche (Notification No. FEMA.377/2016-RB, dated 10th January, 2017)</i> <i>To bring CN at par with other instruments, a specific exemption should be provided for its conversion into equity.</i>
154.	Section 43CA, 50C and 56 – Allowance of variation of 10% between stamp duty value and the sale consideration – Increasing the permissible variation and need for retrospective amendment	The existing provisions of section 43CA (business profits), 50C (capital gains) and 56 (income from other sources) while taxing income arising out of transactions in immovable property require adoption of the sale consideration or stamp duty value, whichever is higher. However, to minimize hardship in case of genuine transactions in the real estate sector, the Finance Act 2018 amended the said sections to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration. The Finance Act 2018 provided that in cases where the stamp duty value of immovable property does not exceed 110% of consideration received/receivable on transfer of capital asset/stock in trade being land or building or both, consideration received/receivable shall be full value of consideration.	<i>i. The erstwhile provisions dealing with transfer of immovable property for lower consideration had delta of 15% and 25% respectively in section 52(2) and section 269C(2)(a) of the Act. The present delta of 10% is accordingly far too inadequate and may be increased to atleast 15%.</i> <i>ii. Also, since the amendment is rationalisation measure it may be made applicable from the date the provisions were inserted.</i>



		Similarly, it provided that where the stamp duty value does not exceed 110% of consideration paid to acquire immovable property, there will be no trigger of taxation u/s 56(2)(x) of the Income-tax Act. Issues: - In certain states, there is generally a significant/considerable difference between the stamp duty value/rate and the actual sale consideration and consequently in such cases gap between the two values is more than 5%. Hence, it is suggested to further increase the permissible variation. - The delta of 5% of consideration is highly inadequate as stamp duty value is determined as per area and not as per property. The circle rate may vary due to several reasons. - In the context of section 50C, Tribunals have adopted a view that where the difference between consideration and stamp duty value does not exceed 10%, provisions of section 50C are not applicable - Smt. Sita Bai Khetan vs. ITO (ITA No. 823/JP/2013) (delta of 10%) - John Fowler (India) Private Ltd v DCIT (ITA No. 7545/Mum/2014) (delta 10%) - Krishna Enterprises v ACIT [ITA No. 5402/Mum/2014) (delta 10%)	(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
155.	Exemptions – Skill Development	Section 11 and 12 – Exemption of Income of specified public charitable and religious trusts At present, Skill development Program activity is not included with in the ambit of Charitable activities. The existing ambit of the law should include Institution exclusively engaged in “Skill Development programmes” of all kind and in the Research Activities. Income of such programme should be exempted in full. This will encourage more of institutes to do Skill Development Program activity and Research	It is suggested to include institutions exclusively engaged in “Skill Development programmes” under the ambit of section 11 exemptions. (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)



		activity due to exemption of section 11 and 12.	
156.	Tracking the un-spent portion of capital gain deposit – Levy TDS at the time of withdrawal	At present, there is no mechanism provided in the Act/Rules for tracking the un-spent portion of capital gain deposit. Only when the assessee wants to withdraw the money (otherwise than for house construction), some banks insist on tax clearance certificate, while other banks simply make payment of the balance amount. The assessee is also finding it difficult to obtain the tax clearance certificate.	<i>It is suggested that the relevant rules/Act can be amended to provide that the un-spent amount can be released by the bank after deducting 20% thereof which can be remitted to the Government by way of TDS.</i> (SUGGESTION FOR IMPROVING TAX COLLECTION)
157.	Schedule 4/Rule 8(iv) - Compulsorily mandate the one-time portability from a recognised provident fund to the NPS at the option of the employee member	With a view to bringing all the pension plans under one umbrella, clause (iv) was inserted in Rule 8 to Part A of the 4th Schedule to the Income-tax Act, 1961 whereby one-time portability from a recognised provident fund to the National Pension System (NPS) was excluded from the total income resulting from the accumulated balance due and becoming payable to an employee participating in the said recognised provident fund. The above amendment was effective from April 1, 2017 (AY 2017-18). It is regretted that even after four years from the amendment becoming effective, members of recognised provident fund trusts are not able to transfer their balance at their choice to the NPS. This is because in order to make such transfers the respective provident fund trusts are required to make an amendment in their trust rules which need to be approved by the Regional Provident Fund Commissioners office. These approvals are not forthcoming as there is no enabling amendment in the Employee Provident Fund & Miscellaneous Provisions Act, 1952, read with EPF Scheme 1952. Allow an individual assessee to benefit from	<i>It is suggested that necessary legislative amendments are introduced so as to compulsorily mandate the one-time portability from a recognised provident fund to the NPS at the option of the employee member. The Trust Rules may automatically be taken as amended to incorporate clause (iv) of Rule 8 to Part A of the 4th Schedule to the Income-tax Act, 1961.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



		the amendment in Finance Act 2016. At present the amendment is only on paper and bogged down in needless approvals over which an individual assessee has no control.	
158.	Schedule 4/Rule 8(i) – Ease of withdrawal from Recognised Provident Fund	As per clause (1) of Rule 8 to the aforesaid 4th Schedule, the accumulated balance due and becoming payable to an employee participating in the said recognised provident fund is not subject to Income tax in the event the employee member has rendered continuous service with his employer for a period of 5 years or more. The definition of the tenure of 5 years is watertight. It causes unnecessary hardship to salaried people who have lost jobs because of COVID-19 or are superannuated people who for various reasons are falling a little short of the 5 year period as they had withdrawn the PF balance in the previous jobs for family reasons. The amendment in this case will significantly ease the hardship caused by the watertight definition of 5 years. The Hon'ble Finance Minister had earlier announced easier withdrawal of PF balance up to 3 months to mitigate the hardship resulting from COVID-19 pandemic. More recently tax benefits on Leave Travel Allowance etc. were announced. The requested amendment for relaxing the 5-year tenure definition as above would further help the employee members to mitigate the hardship resulting from job losses on account of the COVID-19 pandemic and make available additional funds to them to boost the consumption in the economy. This would also have virtually no fiscal impact.	<i>It is suggested that the said definition may be relaxed to allow for:</i> <i>a) a smaller tenure of say 3 years;</i> <i>b) moratorium on the application of the 5 year rule for a period of 1 year;</i> <i>c) allow for a fraction of the year of say 240 days to be rounded off to the next higher year; and/or,</i> <i>d) allow for relaxation in the case of employee members who have reached the superannuation age of 60.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
159.	Reduction of Stamp Duty and Registration rates	The current Stamp Duty and Registration levied by States are varying from 5 – 15%. This is not only prohibitively high, but also encourage unhealthy practices in Real Estate	<i>It is further suggested that the upfront premium may also be allowed as revenue expenditure as it is</i>



		Sector. Any upward movement of Housing and Real Estate Sector, will automatically move the wheels of the economy, as it generates huge employment opportunities due to its backward and forward linkages with a host of other industries. Leasing is preferred way of acquiring land by big businesses. At the time of acquisition of lands on leaseholds, two types of payments are involved: upfront premium and monthly lease rent. Monthly lease rent is rightly allowed as expenditure to the lessee. But premium is capitalised. In reality out of such lease, no capital asset is generated in the hands of the lessee. Section 2(5) making deemed rental income taxable after two years of property construction is a punishment to genuine developers who are unable to dispose off their stock in the slump. Therefore, once a builder demonstrates that he has not been able to sell despite genuine efforts to sell, the deeming provisos should not be made applicable.	essentially a business expenditure only. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
160.	Capital gains tax exemption in case of merger/restructuring involving LLPs	Presently merger/ restructuring of companies is not regarded as transfer as per section 47 (subject to fulfilment of prescribed conditions). However, provisions of the Act are silent on taxability of mergers/demergers involving LLPs. Issue: Merger/ restructuring involving LLPs may be subject to capital gains tax	In order to bring LLPs at par with company, it is suggested that merger/restructuring of LLP may also be brought under the list of exemptions from capital gains under section 47. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
161.	Taxation of ESOP in case of employees of eligible start-ups	The proposal to defer the collection of tax on ESOPs exercised by employees of 'eligible start ups' (i.e. start-ups set up on or after 1 April 2016 approved by Inter Ministerial Board for claiming benefit under section 80-IAC) will	ESOP tax deferral should be extended to all start-ups registered with DPIIT.



		benefit employees of only about 250 such 'eligible start-ups' leaving out employees of about 28,000 start-ups registered with The Department for Promotion of Industry and Internal Trade ('DPIIT'). The provision provides for taxation of ESOP perquisite in the year of allotment/transfer of shares whereas the collection of tax is deferred to future date, which is 14 days from the date of a) completion of 5 years from end of year in which ESOPs are exercised; or b) shares are sold; or c) employee leaves the employment of the eligible start up, whichever is earlier. As per amendment in section 140A and section 156 of the Act, it appears that that notice of demand will be raised on the employee, but it will be enforced on a future date. Reference to payment of 'interest' by the employee in section 140A and section 156(2) leads to uncertainty with respect to the employee's liability to pay interest since there is no corresponding amendment in section 234A or 234B of the Act. The aforesaid deferred payment mechanism raises various doubts on the employee's liability.	<i>Instead of proposed scheme of issue of demand notice followed by deferment of collection, scheme can be enacted on similar lines as that of section 45(2) dealing with conversion of capital asset into stock-in-trade where the income is quantified in the year of conversion but the taxation is deferred till the year of sale of converted asset. The trigger for ESOP taxation can itself be on the happening of any of the prescribed events.</i> <i>If the provision is proposed to be retained in current form, consequential amendments may be made to section 234A, 234B and 220(1) to clarify that employee's liability to pay interest gets triggered only in case the employer fails to deduct tax within the prescribed deferment period.</i> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
162.	<i>Rate of dividend taxation in hands of resident</i>	In view of the classical system of dividend taxation introduced vide Finance Act, 2020, resident individual investors in higher tax bracket will be subject to higher tax liability up to 30% (plus surcharge and education cess) whereas non-resident investors will benefit from lower rate of 20% (plus surcharge and	<i>The rate of dividend taxation in hands of resident investors may be kept at 20% (plus applicable surcharge & cess) i.e. at par with tax rate applicable for non-</i>



	cess) under section 115A of the IT Act and further lower rates of 5% to 15% under the tax treaties. Taxation of dividend will only benefit non-resident investors and is against the interest of the resident individual shareholders. In various countries across the world, dividend income is taxed at lower rates since profit out of which dividends are paid, are already taxed at the dividend paying company level. Due to this, there is indiscrimination with resident investors compared to non-resident investors. Issue: Higher rate of dividend taxation in the hands of resident individual investors.	<i>residents and also earlier DDT rate.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
--	---	--



OTHERS



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
163.	Issues arising from applicability of Companies Act, 2013 - Amalgamation	a) Section 72A of the Income-tax Act, which deals with treatment of unabsorbed losses and unabsorbed depreciation, in case of amalgamation, is restrictive in its application. Presently benefits of Section 72A are available only to company owning industrial undertaking or a ship or a hotel or banking company. Due to this restriction, other sectors namely service sector and real estate sectors are not eligible for benefits in the form of handing over of loss from one company to another.	<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. (SUGGESTION FOR IMPROVING TAX COLLECTION)</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. (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</i>



PART B

SUGGESTIONS FOR IMPROVING TAX ADMINISTRATION AND CITIZEN SERVICES



DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
164.	Section 154 - Mistake apparent from record	Even after due efforts taken by the Government to ensure compliance relating to filing of TDS returns by the deductors, the defaults on behalf of deductors continue for one or the other reason. This deprives the deductee from claiming the Tax so deducted in his return of income filed before due date of filing return. However, situations do arise where the returns are belatedly filed or a correction statement has been filed at a later date by the deductor resulting into a credit in Form No. 26AS of the deductee at a later date say after the time limit of filing a revised return has also expired. Considering the fact that such an omission in the return of income, duly supported by the entries of Form No. 26AS, is a mistake apparent from record, it is suggested that the Assessing Officers may be intimated to accept the rectification application under section 154 in such cases. This will surely be helpful in removing the administrative hindrances being faced by the assesseees as well as the Government.	<i>It is suggested that section 154 may be amended so that rectification applications u/s 154 in cases where Form No. 26AS reflects the entries relating to TDS but the same has not been claimed in the return of income be treated as errors/omissions.</i> (SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
165.	Section 154/155(14) - Different Methods of accounting followed by the deductor and deductee - Rule 37BA	One of the important reasons for mismatch of TDS claimed and TDS as per Form 26AS is adoption of different method of accounting (i. e. Cash or Mercantile) by the deductor and deductee. Various situations that may arise have been explained below by means of examples: i) Deductor- Mercantile system of accounting Deductee-Cash system of accounting If the deductor follows mercantile system of accounting, the tax would be deducted at source and deposited in the year in which provision is made. Whereas the deductee following the cash basis of accounting, would	<i>Considering the aforesaid difficulties, it is suggested that section 154/155(14) be appropriately amended so that errors and omissions like non-claiming of TDS be included therein. Further, the aforesaid amendment being clarificatory in nature should be given retrospective effect so as to allow genuine taxpayers to claim credit of TDS in case not claimed in the return of income for any reason.</i>



Sr. No.	Section	Issue/Justification	Suggestion
		offer the income and claim TDS in the year in which the amount is actually received by him. For example, audit fees paid to a Chartered accountant's firm by a company. In such a case it is difficult for the deductee to claim TDS as the TDS certificate is issued in respect of the year other than the year in which it is claimed. Also, in some cases, the receipts may be spread over in two or more years. In such cases, there is difficulty in getting credit of TDS in second and subsequent year in which amount is actually received. (ii) Deductor– Cash system of accounting Deductee – Mercantile system of accounting There is a provision to take the credit of TDS in the year in which income is assessable to tax. If for any reason, TDS certificate has not been furnished; such certificate can be produced within two years u/s 155 of the Income-tax Act. But issue generally arises when the following situation occurs: In case of a deductee who maintains books of accounts on mercantile basis. The amount due to him in respect of a government contract is accounted for in his books of accounts in a particular year and advance tax/ self-assessment tax is paid by him in respect of that income. However, the government which maintains books of account on payment basis pays the amount after two years after deducting tax at source. In such a case, the assessee would neither be entitled to claim credit of TDS in the year of receipt as the income has 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	<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> <i>(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)</i>



Sr. No.	Section	Issue/Justification	Suggestion
		to the government.	
166.	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 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.	<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 as an alternative Return system.</i> (SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)
167.	Give RERA effect in Income taxation	The ICDS on taxation of builders and developers is ready and is likely to be announced at any time. The said ICDS deals with accounting for builders and developers on percentage completion method. However, it is absolutely necessary to recognise that the RERA law gives an absolute right to the unit buyer to refund of money with interest and compensation on delay beyond assured date. This refund provisions will be more visited in the downward market by the unit purchasers. Under such circumstances, it will create a very difficult situation for the builders and	<i>It is suggested to provide impetus to the real estate constructions. The present RERA law has stringent constraints upon the project and the developer. The same may be supplemented by the incentives. For example, once a project is completed in all respects as per the RERA deadlines, and as per</i>



Sr. No.	Section	Issue/Justification	Suggestion
		developers as by application of percentage completion method, the tax might have been paid and thereafter if some units sale get cancelled, there is no right of refund. At the most, such tax can be adjusted on subsequent sales. However, if subsequent sales don't happen then it will be an additional punishment to the builder/developer that he has been subjected to refund and he has paid off part of the tax also on percentage completion method. It is therefore, absolutely necessary that the builder/developer is given an option to recognise sales only on project completion method. This becomes further imperative as the 70% of the sales proceeds cannot be even touched by the builder except for meeting cost of construction and cost of acquisition of land. There may be stoppages of constructions for various reasons. Under such circumstances, money will lie idle in designated bank account.	assurances under RERA, such projects can be made eligible for tax benefits even though it is not covered as affordable housing project. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
168.	Tax consolidation Scheme	Background In India, separate entities are incorporated based on their specialization in various lines of businesses by the parent company. The group as a whole and the tax Department face many challenges. Some of them are:- • Each Entity is required to file a separate income tax return involving huge cost of compliance. • Each entity is assessed / scrutinised separately for intra-group transactions resulting in litigation cost for each entity. Significant administrative costs are incurred by the Income tax Department in keeping track of records and assessing multiple subsidiaries. • Apart from cost, a lot of efforts are required by both tax payer as well	It is suggested that government may consider introducing the concept of tax consolidation scheme considering the mutual benefits to both tax department and the assesseees. (SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)



Sr. No.	Section	Issue/Justification	Suggestion
		as Income tax Department for undertaking compliance. • Tax consolidation or combined reporting is a regime adopted in the tax or revenue legislation which treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes. Benefits – • Tax consolidation scheme would help to centralize the planning and payment of tax by the parent company. The company can set off the losses of one inter group company with the profits of another company. • Tax Consolidation will help in tax free movement of assets across the group which would aid in internal restructuring and optimum utilisation of resources. • The number of litigations pending with the tax department would also reduce and thereby reducing the administrative cost of the Income-tax Department. • The tax consolidation regime has been adopted in tax legislations of a number of foreign countries like Australia, France, Germany, Italy, Japan, Korea, Spain, USA etc. These countries have not only successfully implemented the said regime but also created a positive impact on business with significant reduction of compliance and litigation cost. • The tax consolidation regime also endorses the Government's efforts of "Ease of doing business in India" and assist in aligning the business and tax objectives of the industry.	
169.	Consolidation of Group losses	COVID 19 pandemic has impacted various business groups. At a group level, the impact is heavy. Further, it might so happen that most of group's companies would be incurring losses except for few but at group level, it is negative.	<i>It is suggested that consolidation of losses at group level may be permitted.</i>



Sr. No.	Section	Issue/Justification	Suggestion
		Amid severe financial / liquidity crunch, requiring the profit-making entity to pay tax will further increase the burden on the group.	(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
170.	Carry back of losses	With an aim to provide impetus to businesses which are presently incurring losses, a new provision to carry back losses up to specified preceding period, subject to fulfilment of prescribed conditions, may be introduced.	<i>It is suggested to permit carry back of losses.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
171.	Need to reduce tax rate of partnership firms in line with corporate tax rate reduction	Partnership Firms are taxed at 30%. Corporate tax rates are reduced to 25% and 22% subject to certain conditions. But partnership firms pay higher tax irrespective of turnover. Partnership firms taxation should be reduced to encourage starting new ventures where money need to be invested by one and intellectuals and expert people etc. If Government reduces tax, more business entities may come up. Now, for any amount earned 30% tax is forgone to business. Whereas for company it is not like that. To encourage small and medium enterprise this tax should be reduced immediately.	<i>Partnership firms having turnover up to certain limit can also be taxed on par with corporate. i.e. at 25% or 22%.</i> (SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)
172.	Reduction in rate of tax in case of Firms and LLPs engaged in the business of Infra Industry and Real Estate Sector	The Infra Industry has to switchover its business premises starting from Metro to more remote rural places frequently. For establishing each work site, every time it has to put enormous efforts as well as resources. For construction contractors, major portion of profit is lying with departments in the form of withheld amount and deposits. To ease doing of business, this industry needs the support of the Government in direct monetary terms.	<i>It is suggested that reduction in rate of tax @ 22% plus applicable surcharge and cess for the firms and LLPs of real estate industry at par with the recently reduced Corporate tax rate will give boost to the industry which is building the Nation.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF



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



Sr. No.	Section	Issue/Justification	Suggestion
		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 No. 26AS appearing in the system but require hard copies of the TDS certificates. Section 199 of the Act and Rule 37BA of Income-tax Rules in relation to grant of TDS credit Conjoint reading of the Section 199 of the Act and Rule 37BA of the Rules framed thereunder suggests that credit for the tax deduction should be given/granted on the basis of information relating to deduction furnished by the deductor (i.e. Form 26AS) and the information in the return of income of the claimant. The requisite details in respect of the tax deducted at source are available in Form 26AS. The taxpayer may furnish the information relating to tax deducted at source in the return of income based on the details available in Form 26AS leading to inference that both the information furnished by deductor and information in the return of income are same i.e. as per Form 26AS. CBDT Circulars on issuing of TDS certificate The CBDT vide Circular No 3/2011 dated 13 May 2011 and Circular No 1/2012 dated 9 April 2012 has mandated for all deductors to issue Form 16A which is generated from TIN (Tax Information Network) website. • Further the CBDT in para 3 of Circular No 3/2011 specifically mentioned as under: "3. The Department has already enabled the online viewing of Form No. 26AS by deductees which contains TDS details of the deductee based on the TDS statement (e-TDS statement) filed electronically by the deductor.	(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)



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



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



Sr. No.	Section	Issue/Justification	Suggestion
		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, <i>inter alia</i>, for the following: — (a) All sums of tax deducted at source under Chapter XVII-B and of tax collected at source under Chapter XVII-BB shall, in general, be paid to the credit of the Central Government within one week from the end of the month in which the deduction, or collection, is made. Similarly, the same time-limit for payment will also apply for income-tax due under sub-section (1A) of section 192. (b) It is mandatory for all deductors (including Central Government and State Governments) to pay the amount by electronically remitting it into the RBI, SBI or any authorized bank. (c) It is mandatory for all deductors (including Central Government and State Governments) to make the payment by electronically furnishing an income-tax challan in Form No. 17. (iii) In the process of electronically furnishing the income-tax challan in Form No. 17, the deductor will be simultaneously required to	THE PROVISIONS OF DIRECT TAX LAWS)



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



Sr. No.	Section	Issue/Justification	Suggestion
		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 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.	



PART C

SUGGESTIONS PERTAINING TO INTERNATIONAL TAXATION



DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
175.	Provisions regarding indirect transfer of capital asset situated in India - Section 9	The Finance Act, 2015 has amended provisions dealing with indirect transfer of capital asset situated in India. The amendment provides clarity on certain contentious aspects with regards to taxation of income arising or accruing from such indirect transfers. The following amendments have been introduced in the Act. - Share or interest in a foreign company or entity shall be deemed to derive its value substantially from Indian assets only if the value of Indian assets (whether tangible or intangible) as on the specified date exceeds the amount of INR 10 crores and represents at least 50 per cent of the value of all the assets owned by the foreign company or entity. - The value of an asset shall be its Fair Market Value (FMV). Subsequently, the CBDT notified the Rules prescribing the manner of computation of FMV of assets of the foreign company or entity and the reporting requirements by the Indian concern. - The date of valuation of assets (without reducing the liabilities) shall be as at the end of the accounting period preceding the date of transfer. However, in case the valuation of 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	Since the objective of the amendment is to tax indirect transfer through shell companies, a listed company should not be considered as a shell or conduit company. The same was also suggested by the Shome Committee. It is recommended that exemption should be provided in respect of transfer of shares in a foreign company (listed on a stock exchange outside India) having substantial assets located in India. Intra-group transfers as part of group re-organisations (other than amalgamation and demerger) should also be exempt from the indirect transfer provisions. While Explanation 5 to Section 9(1)(i) of the Act provides that shares of a foreign company which derives directly or indirectly its substantial value from the assets located in India shall be deemed to be situated in India. Section 47(vicc) of the



Sr. No	Section	Issue/Justification	Suggestion
		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 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.	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 demerger, of a capital asset, being a share of



Sr. No	Section	Issue/Justification	Suggestion
			a foreign company, referred to in Explanation 5 to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly, its value substantially from the assets located in India, held by the demerged foreign company to the resulting foreign company, if,—” It is suggested that a similar amendment should also be made under Section 47(viab) of the Act (in case of amalgamation). Section 234A, 234B, 234C and 201(1A) of the Act should not be applied in cases where a demand is raised on a taxpayer on account of retrospective amendment relating to indirect transfer. An appropriate amendment should be made in the respective provisions of the Act. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
176.	Section 9(1)(i) - Benefit of non-applicability of indirect transfer provisions in case of Category	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	It is suggested that: While issuance of Circular no. 28/2017 is a welcome clarification for non-residents in respect



Sr. No	Section	Issue/Justification	Suggestion
	I and II FPIs - Provisions for avoidance of double taxation in case of such indirect transfer provisions, where direct transfer has already been subject to tax	substantially from assets located in India. The Finance Act, 2017 provided that the aforesaid deeming provisions shall not apply to an asset or capital asset mentioned in Explanation 5 of section 9(1)(i), which is held by a non-resident by way of investment, directly or indirectly, in a Foreign Institutional Investor as referred to in clause (a) of the Explanation to section 115AD and registered as Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992. The Finance Act, 2017 exempted investors (direct / indirect) in category I (sovereign funds) and category II (broad-based funds) FPIs from the application of indirect transfer tax provisions. The CBDT has, recently, issued a Circular No. 28/2017 dated 7 November 2017 clarifying that the indirect transfer provisions shall not apply to income arising to a non-resident on redemption or buy-back of shares held indirectly through specified funds, if such income is consequent to transfer of shares held in India by the specified funds and such direct transfer is taxable in India. The Circular applies to specified funds (VCF, Category I or II – AIF) and not to offshore funds in general. Further, the exemption will be restricted 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.	of redemption or buy-back of shares held indirectly through specified funds (FPIs registered as Category -I or Category -II), in respect of other offshore funds the indirect transfer provisions may still lead to double taxation Therefore, a suitable amendment should be brought in to the effect that exemption is extended to all offshore funds (interalia Category-III FPIs) and should not be restricted to specified funds. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
177.	Scope of Royalty Income - Section 9(1)(vi)	(a) Right to use a copyright vis-à-vis Right to use a copyrighted article Internationally, as evidenced by OECD Commentary and opinion of eminent experts, the following two basic principles with regard to software payments are recognized and well settled: (i) The proposition that “right to use a copyright” is different from “right to use a copyrighted	It is suggested that payments for copyrighted article like shrink-wrapped software as also payments made by distributors of software be specifically excluded from the definition of “royalty”. (SUGGESTION FOR REDUCING/MINIMIZING



Sr. No	Section	Issue/Justification	Suggestion
		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 products represent sale of copyrighted articles as against a copyright i.e. such transactions represent sale of goods. Packaged software has been held to be ‘Goods’ even by the Supreme Court in case of TCS vs. State of AP (271 ITR 401). The Central Board of Excise and Customs (“CBEC”) has recognized ‘Information Technology Software’ as ‘Goods’ and classified the same as Central Excise Tariff Item 8523 80 20 in Schedule I to the Central Excise Tariff Act, 1985. Further, ‘Packaged Software/Canned Software’ is recognized as ‘Goods’ for the purposes of Central Excise Law by the CBEC, which is another wing of the Ministry of Finance. These facts lead to the conclusion that ‘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’.	LITIGATIONS)
		(b) Use of Standard facilities	In view of decision of



Sr. No	Section	Issue/Justification	Suggestion
		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.	Apex Court in CIT Vs. Kotak Securities Limited <i>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> <i>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</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 <i>BDA Limited vs. ITO (TDS) 281 ITR 99 (HC Bom), CIT vs. Dabur India Limited (283 ITR 197) (HC Del)</i>. Considering the facts and arguments above, it is clear that transaction of sale of 'Packaged/Canned Software' is a 'contract for sale' as against a "contract for work" and consequently, should not attract TDS provisions. It is relevant to note that 'Packaged/Canned Software' is also subject to excise duty. There are no other goods in India which are subject to both excise duty and TDS. An amendment to the Income-tax Act to exclude 'Packaged/Canned Software' from the purview of 'royalty' would automatically	<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> <i>"194J. (1) Any person, ...</i> <i>Provided that no deduction shall be made under this section—</i> <i>1. ...</i> <i>2. ...</i> <i>from any sums, if credited or paid for the transfer of a computer software (including the</i>



Sr. No	Section	Issue/Justification	Suggestion
		exclude the transactions from the purview of Section 194J of the Income-tax Act and would help resolve the withholding tax issue faced by traders of hardware with embossed software. The distribution network and channel partners for off the shelf packaged software also deal with hardware like computers, desktop etc. The packaged software is mostly sold along with the hardware, on the same invoice. There is no obligation of TDS on any hardware items, and the traders are finding it confusing and difficult to discharge the TDS obligation arising out of the sale of the 'Packaged Software/Canned Software'. Resolution of the definition of royalty to exclude 'Packaged Software/Canned Software' would also help traders and boost ease of business. Separately, Software Ancillary Services such as Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license but involve only payments of consideration for services is not 'Royalty' for the purposes of Section 194J read with Section 9(1)(iv) Explanation 2 of the Income-tax Act. Clarification may be issued that AMC's, Upgrade Fees, Subscriptions, etc. which do not involve transfer of rights, or grant of license, but involve only 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.	<i>granting of a licence), along with or without a computer or computer-based equipment or for ancillary services such as up gradation or subscriptions, which does not involve transfer of all or any rights in respect of any copyright."</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
178.	Explanation 5 to Section 9(1)(vi) – e commerce services	Explanation 5 to Section 9(1)(vi) has been introduced by Finance Act 2012 w.e.f. 1 June 1976 to clarify that royalty includes and has always included consideration in respect of any right, property or information, whether or not the right, property or information is used directly by the payer or is located in India or is in the control or possession of the payer.	<i>In view of the above, it is recommended that revised definition is withdrawn to keep the definition as it was before the amendment by Finance Act</i> <i>In a bid to fuel the</i>



Sr. No	Section	Issue/Justification	Suggestion
		- Finance Act 2012 also brought in another retrospective amendment to the definition of the term 'Royalty' by introducing Explanation 6 to Sec 9(1)(vi) thereby enlarging the scope of the term 'process' to include transmission by satellite, cable, optical fiber or by any other similar technology, whether or not such process is secret. - The above amendments could be interpreted to bring within its ambit, payments made by Telcos to other domestic operators for services like interconnect, roaming, etc. Tax withholding on such payments would result in significant cash flow issues for Telcos. Rationale - As regards payments made to non-resident operators, a position may be taken that since the term 'process' has not been defined in the treaty, meaning of the same can be imported from domestic tax law for interpreting provisions of the tax treaty [relying on Article 3(2) of treaty read with section 90 and 90A of the Act]. The above would result in payments being made to foreign operators located in treaty countries also subject to tax withholding in India. - Treaty override - The term used in the treaty is 'secret process' whereas in the domestic law the term is 'process' and hence not pari materia. Any such interpretation would lead to treaty override since such position is not in line with principles of Vienna Convention of Law on Treaties and would be tantamount to unilateral rewriting of the treaty. - Non availability of tax credit– Without a corresponding amendment in the treaty, tax deduction due to amended definition of royalty under the provisions of the Act may not be treated as tax paid in accordance with the provisions of tax treaty. Accordingly,	<i>highly competitive Telecom Industry as well as to bring in clarity, the Government should clarify that Explanations 5 and 6 should not be interpreted in a way to bring payments, whether made to domestic operators or international operators, for standardized telecom services including basic/ mobile telephony, internet, roaming, interconnect, etc. under the ambit of definition of 'Royalty'.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		foreign government may refuse to grant credit of taxes withheld by Indian payer, resulting in double taxation for the payee. In the absence of clarity on the subject, foreign partners would increase the pricing by 10-15% with the Indian companies to factor in the impact of withholding tax. This would adversely impact the negotiating power of Indian telecom companies. The SC court in a recent decision in the case of CIT vs. Kotak Securities Ltd. held that provision of standard service or facility should not be classified as technical services under section 9(1)(vii) of the Act.	
179.	Tax withholding on transponder hire charges - Section 9(1)(vi) Explanation 6	- Finance Act, 2012 amended the section 9 retrospectively to include payment for transponder hire and other charges as royalty w.e.f. 01.06.1976. - However these are not regarded as royalty under DTAA as definition of royalty in the DTAA remains same and has not been amended, which results in denial of tax credit of withholding tax/tax paid in India, to the Satellite Service Providers. - The contracts with Satellite Service Providers are on "net of tax" basis leading to 12-13% extra cost burden on Indian service recipients (at the present level of WTH rate of 10%).	Clarification to be issued that Transponder hire charges are not "royalty" in order to avoid protracted litigation. Further, a clarification should also be issued that the definition of 'process' under the treaty should be read independently and the definition of 'process' under Section 9 of the Act should not be interposed in the treaty definition. Various courts in India have held that such charges are not 'royalty' or FTS as these are standard services and involve no transfer of technology. Even globally, OECD commentary also does not treat such



Sr. No	Section	Issue/Justification	Suggestion
			payments as “royalty” or “FTS”. • The Media Industry which includes the Satellite Broadcasting, DTH, HITS and Satellite News gathering (DSNG & VSAT) leases over 100 transponders on foreign satellites, which on a gross basis are priced at \$190 Million dollars per year. Owing to the satellite transponder leases being treated as Royalty, which is not being held admissible for benefit of DTAA in different jurisdictions, the Indian industry is being forced to gross up the withholding tax levied in India, as the benefit of the same is not available to the foreign satellite provider in its country, despite having a DTAA with India. This leads to a gross up to the tune of \$20 - \$22 Million to be borne by Indian industry over and above the fees for transponders as the foreign satellite operators need to be paid on a net basis the price of the transponder use. This is putting an undue burden on the industry without any benefit to the Indian entity or the



Sr. No	Section	Issue/Justification	Suggestion
			<i>foreign satellite provider. This is also against the spirit of the DTAA.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
180.	Section 9(1)(i) Explanation 6(b)	Section 9(1)(i) Explanation 6 (b) the value of an asset shall be the fair market value as on the specified date, of such asset without reduction of liabilities, if any, in respect of the asset, determined in such manner as may be prescribed; "specified date" means the— (i) date on which the accounting period of the company or, as the case may be, the entity ends preceding the date of transfer of a share or an interest; or (ii) date of transfer, if the book value of the assets of the company or, as the case may be, the entity on the date of transfer exceeds the book value of the assets as on the date referred to in sub-clause (i), by fifteen per cent. [EMPHASIS PROVIDED] This and connected provisions were brought on the statute book as an anti-avoidance measure to curb the practice of foreign companies changing control at significantly high value which decidedly came from Indian business and such structure was essentially adopted to avoid Indian capital gains tax. However, this provision is attracted even where there is no such intention. The definition of specified date being the date of the end of the latest accounting period prior to the date of transaction of transfer of the shares of the foreign company, particularly poses a problem. A Multinational company, which is reorganising or restructuring its global business may be doing so for a number of reasons, least of which may be	<i>To remove this double taxation, anomaly and hardship in such genuine cases, it is recommended that the provision be amended as follows:</i> <i>This provision should not be attracted where:</i> (i) <i>the Indian asset owned by the foreign company is sold between the specified date & the date of transfer of the shares of the foreign company and the Indian capital gains tax thereon is paid as applicable.</i> NOTE: In view of the anti-avoidance provisions of sections 50CA and section 56(2)(x), avoidance of capital gains tax on sale of the Indian asset or shares at low value prior to the date of transfer of the shares of the foreign company is unlikely to happen. Hence this risk is avoided. (ii) <i>The value contributed by the Indian</i>



Sr. No	Section	Issue/Justification	Suggestion
		connected with Indian taxation. Hence, even where such foreign company has already sold off its Indian subsidiary (or asset) separately to a third-party buyer just before transferring its own shares, it may still be liable to this indirect taxation because on the specified date it owned the Indian company (or asset). This provision is anomalous and results in double taxation in this situation since post the specified date, when the Indian asset is sold, the foreign company would have paid its capital gains tax in India. Yet, because such Indian asset was on its balance sheet on the specified date, the transfer of its share may still attract capital gains tax in India on account of indirect Indian asset transfer.	asset to the foreign company has reduced by more than 15% between the specified date and the date of transfer of the shares of the foreign company, (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
181.	Definition of Significant Economic Presence (SEP) for the purpose of business connection	- SEP was introduced to tax non-resident entities conducting business through digital medium. - However, definition of SEP is not clear that it is applicable only to non-resident entities conducting business through digital medium.	Considering the intent to tax digital business carried out by non-resident entities in India, the definition of SEP should be amended to restrict its applicability to business carried through digital medium. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
182.	Introducing safeguards while applying Principal Purpose Test under the tax treaty	India has adopted the minimum standard Article 7(1) of the Multilateral Instrument (MLI) which introduces Principal Purpose Test (PPT) in its tax treaties. PPT test is akin to the Indian General Anti-Avoidance Rules (GAAR). However, while introducing PPT (once MLI becomes effective), there are no safeguards provided under the Income Tax Act, 1961. In fact, GAAR provides additional safeguards like pre-approvals and process under GAAR-panel, etc.	It is suggested that for the cases where PPT test under MLI is invoked, the Government should provide similar treatment as GAAR-safeguards. This will provide certainty to the foreign investors and will facilitate ease of doing business in India. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
183.	Grandfathering of Principal Purpose Test application	India has adopted the minimum standard Article 7(1) of the Multilateral Instrument (MLI) which introduces Principal Purpose Test (PPT) in its tax treaties. PPT test is akin to the Indian General Anti-Avoidance Rules (GAAR). GAAR provides grandfathering to the specified transactions entered into before 1 April 2017 (the date on which GAAR became effective). A similar grandfathering, however, is absent in case where PPT under the treaty is invoked. This creates uncertainty for past transactions once MLI becomes effective.	Therefore, it is suggested that the Government should provide the grandfathering for the application of PPT test to the past transactions. This will provide certainty to the foreign investors and will facilitate ease of doing business in India. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
184.	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 tax payable by non-residents is only in the range of 5% to 10%.	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. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
185.	Cross-border merger	Exemption from Capital gains A transaction of amalgamation, where the amalgamated company is an Indian company, is	The merger of an Indian company with a foreign company in a specified jurisdiction is now



Sr. No	Section	Issue/Justification	Suggestion
		exempt from capital gains tax liability. Further, in case of an inbound merger, the capital gains arising to the shareholders of the amalgamating company is also exempt. Similar tax exemption is not available to the amalgamated company or its shareholders in case of an outbound merger. Exposure to a permanent establishment (PE) Post an outbound merger, the assets, liabilities and employees of the amalgamating Indian company may continue to physically exist in India. This may create a PE exposure for the amalgamated foreign company. In that event, business profits attributable to the foreign amalgamated company's PE in India will be liable to tax at the rate of 40% (plus applicable surcharge and cess).	<i>permitted as per section 234 of the Companies Act, 2013 r.w. Rule 25A of the Companies Merger Rules.</i> <i>The FEMA Merger Rules have also been amended to permit an outbound merger, subject to conditions. One such condition is that a foreign company can acquire and hold only certain assets in India which are permitted under the relevant FEMA regulations for the acquisition of property in India.</i> <i>Such cross-border mergers would not be attractive till the time there exists tax liability or ambiguity around taxability for such transactions. The income tax provisions, therefore, need to be aligned with corporate law and FEMA to achieve the objective of increasing the ease of winding up operations in India.</i> <i>The following tax treatment is recommended for consideration:</i> <i>Removal of a condition specified in section 47(vi):</i> <i>• The condition that the amalgamated entity should be an Indian company for claiming exemption from capital gains tax arising on transfer of the undertaking should be removed.</i>



Sr. No	Section	Issue/Justification	Suggestion
			No taxability for the shareholders of the amalgamating company. - The shareholders receiving shares of the foreign amalgamated company should not be subject to capital gains. Relaxation of a condition specified under section 2(1B) - Due to restrictions in FEMA Regulations, ALL assets and liabilities pertaining to the undertaking may not be transferred to the amalgamated foreign company. Considering the impossibility of performance, the condition for transfer of all assets and liabilities of the undertaking as required under section 2(1B) should be relaxed. Clarity on 'Business Connection' under section 9(1)(i): - Post amalgamation, the foreign amalgamated company would carry on business in India. A specific provision could be added to the definition of 'business connection' under section 9(1)(i). This would bring clarity to future taxability of the foreign amalgamated entity. Transfer of carried forward



Sr. No	Section	Issue/Justification	Suggestion
			losses and unabsorbed depreciation under section 72A. • The carried forward business losses and unabsorbed depreciation of the amalgamating Indian entity should be available to the permanent establishment of the amalgamated foreign entity. (SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)
186.	Master File Regulations	a) The threshold for applicability of master file regulations has been kept at consolidated group turnover of INR 500 crore accompanied with aggregate international transaction(s) of INR 50 crore. This is significantly lower than the OECD recommendations/global trend. This has brought a lot of mid-sized taxpayers into the net of master file compliance, increasing the compliance burden on them.	<i>The threshold should be aligned with that for CBCR.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
187.	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/ 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	<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 that clause 16 of Form No. 3CEB should be amended so as clarify that share Capital transaction is not required</i>



Sr. No	Section	Issue/Justification	Suggestion
		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.	<i>to be reported /justified in Form 3CEB.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
188.	Permissible variation available in case of Single comparable used determining the arm's length price	The second proviso to Section 92C(2) of the Act permits a variation between arm's length price so determined and price at which International Transaction or Specified Domestic Transaction has actually been undertaken. The amended proviso of section 92C(2) of the Act, clearly allows the assessee a benefit of availing the permissible variation even if single price is determined as an arm's length price. Further permissible variation applies for the difference between the 'Arm's length price so determined' and the price at which the international transaction/SDT is actually undertaken and not from the "arithmetic mean" in the pre amended proviso. The amended proviso as it stands now nowhere mentions that the term "arithmetic mean" as a precondition for availing the permissible variation benefit. However, there is still an ambiguity in the interpretation as to availability of the permissible variation where single comparable is used in determining the arm's length price. The ITAT has given conflicting rulings on the issue and this is leading to unnecessary litigation.	- It is recommended to clarify by way of an amendment or a circular that considering the revised proviso the benefit of variation from transfer price is available even in case of single comparable. It will reduce the litigation, which is one of the agenda items of the existing government. - The above recommendations are also in line with the observations of Hon'ble Income Tax Appellate Tribunal in the case of The Development Bank of Singapore (ITA No. 6631/Mum/2006) and in the case of Reliable Cashew Co. (SUGGESTION FOR RATIONALIZATION OF



Sr. No	Section	Issue/Justification	Suggestion
			THE PROVISIONS OF DIRECT TAX LAWS)
189.	Section 92C(2) and Rule 10 CA - Range concept	Arm's length range is the 35th to 65th percentile of the dataset. Globally, arm's length range is the Inter quartile range (25th to 75th percentile of the dataset). This is practiced in most of the countries, for eg. US, Canada, UK, etc.	<i>The arm's length range in India be aligned with the globally accepted inter quartile range of 25th to 75th percentile of the dataset.</i> <i>It will reduce the compliance cost for the Assessee as a benchmarking from one country perspective can be applied from the other country perspective as well.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
190.	Tolerance Band – Second proviso to section 92C(2)	By Finance Act 2012, the Government notified that the flexibility of the range as was provided in the second proviso to Section 92C(2) cannot exceed 3 percent. In case where the arithmetic mean is adopted to compute the arm's length price (as an alternative to adopting the identified range as introduced in Finance (No 2) Act 2014), limiting the tolerance band to 3 percent (1 percent for wholesalers) is extremely restrictive.	<i>The tolerance band be restored to the earlier limit of 5 percent.</i> <i>The arithmetic mean is used as an alternative where range concept is inapplicable. Allowing higher tolerance band will provide better flexibility.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
191.	Mutual Agreement Procedures (MAP)	MAP provisions as agreed in the respective tax treaties were discussed several years ago and the same needs to be relooked at in light of the changing dynamics of business environment in	<i>The law may provide that where a MAP application has been preferred, the demand may be stayed on</i>



Sr. No	Section	Issue/Justification	Suggestion
		India and globally. Accepting bank guarantee will make MAP more effective for resolution of tax disputes, irrespective of jurisdiction involved. US, UK and Denmark are some of the jurisdictions where an option is available to the tax payer to provide bank guarantee for the tax demand.	<i>furnishing of bank guarantee or other security till completion of MAP process.</i> (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
192.	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 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	Sub-sections (1), (2) and (3) need to be revisited to streamline and appropriately link up the three sub-sections to provide adequate clarity as to the specific requirements from the taxpayers on this front. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		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 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. 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	



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		as determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. Sub-section (2) lays down the requirement for excess monies to be repatriated to India and for interest to be levied thereon, if not repatriated within the prescribed time. However, Sub-section (2) does not refer to 'secondary adjustment' as envisaged under Sub-section (1) and defined in Clause (v) of Sub-section (3). The absence of references to Sub-section (1) and/or 'secondary adjustment' in Sub-section (2) results in an apparent disconnect between Sub-sections (1) and (2) which may have unintended consequences.	
	(ii)	In respect of Unilateral APAs that have been entered till date, there was no provision relating to secondary adjustments in the statute. As a result, APAs have been concluded wherein terms that are not consistent with the Section 92CE have been imposed on taxpayers. In view of a 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> <i>(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)</i>
	(iii)	Clause (ii) to sub-section (1) of the section 92CE provides that a taxpayer is required to make a secondary adjustment where primary adjustment to transfer price has been made by the AO during assessment proceedings and has been accepted by the taxpayer. There is lack of clarity on what exactly the term 'has been accepted by the taxpayer' means.	<i>Government should clarify the term 'has been accepted by the taxpayer' in order to provide certainty on the applicability of these provisions in such situations. For e.g. if the taxpayer is in appeal against the assessment order to Tribunal, in such cases, will secondary adjustment provisions be</i>



Sr. No	Section	Issue/Justification	Suggestion
			<i>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> (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
	(iv)	Since adjustments are made subsequently when returns are taken up for scrutiny, any requirement to make secondary adjustment would depend upon whether the Associated Enterprise is willing to accept the secondary adjustments to be made in its books abroad. Non-acceptance of the same will lead to inter-company issues during consolidation. It could also require restatement of financial statements of an Indian entity if adjustments are material. This in turn might lead to filing of revised returns. Implication on shareholders value and lenders agreement (where there are borrowings) would need to be evaluated besides implications under the Companies Act, 2013. Further, FEMA requires money to be remitted within 6 months from the end of the accounting year. Also, if the Associated Enterprise (AE) located abroad does not pass entries in the books, inter-company adjustments/eliminations could be a challenge if the AE is a holding company.	<i>The said issues may be considered and appropriate remedial measures may be incorporated to avoid genuine hardship.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
	(v)	Applicability of section 92CE has to be restricted only to cases satisfying the base erosion test. The provisions, as presently worded, may give rise to an interpretation that even where the primary adjustment is made in the hands of non-resident, secondary adjustment follows. As a consequence, it may be interpreted as allowing repatriation of funds outside India, which may not be permitted even in terms of FEMA/ RBI regulations.	<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 and PE of foreign entity</i> (SUGGESTION FOR



Sr. No	Section	Issue/Justification	Suggestion
			IMPROVING TAX COLLECTION)
	(vi)	Section 92CE deems the difference between the transaction price and arm's length price as an advance (which is to be recorded in the books) and provides for imputation of interest on such advances. However, there is no specific provision to reverse the advances appearing in the books even in case where the AE relationship ceases to exist or in case where the excess money is repatriated.	<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> (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
193.	Advance Pricing Agreements ('APA')	- The guidelines provide for conducting the assessment proceedings simultaneously, during the pendency of APAs. - This may result in duplication of time and effort of TPO and Assessee, once APA is concluded.	- It is recommended the transfer pricing proceedings be kept in abeyance till the conclusion of the APA, qua covered transactions. In case on conclusion of the APA, the modified returns could be summarily scrutinized. In case the APA proceedings fail, the assessment proceedings can be revived for the proposed covered transactions. The period between date of filing of APA application and date for signing of the APA can be excluded for the purposes of computation of the limitation. - Ease the burden on the Assessee and the Tax Authorities



Sr. No	Section	Issue/Justification	Suggestion
			(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
194.	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.	Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
195.	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. 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	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. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		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 business requirements (either by way of external or related	<i>It is recommended to carve out exceptions for inherently highly leveraged industries from the aforesaid restrictions. The exclusions granted to banking and insurance companies may be extended to other sectors such as Infrastructure, Non-Banking Finance Companies and loss-making companies.</i>



Sr. No	Section	Issue/Justification	Suggestion
		party debt) and might be negatively impacted by the interest restriction.	<u>Also, the provisions should not be made applicable to new companies/start-ups (i.e. companies formed after 1 April 2016) for initial period of 3 years. This would help them to build good track record and be able to independently obtain debt without support of AE.</u> Alternatively, the provisions may not be applicable, subject to certain conditions in line with BEPS Action Plan 4. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
	(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	<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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		pertinent to note that there is no clear definition of implicit guarantee and it would be an onerous task for the taxpayers and tax authorities to determine existence of an implicit guarantee. E.g. when a letter of comfort or simply an undertaking is provided by one AE to a lender or a bank, the tax authorities may contest that guarantee exists, without going into details whether the same has benefited the borrower and whether the AE has actually rendered any service or assumed any liability.	
	(iv)	Based on the definition of the term 'debt' as provided in clause (ii) of sub-section (5) of proposed section 94B, interest may include many other payments made on various kinds of financial arrangements and instruments. There may be an issue as to what payments made by the taxpayer needs to be included in the term interest e.g. which payments on account of finance lease and financial derivatives should be included in the term 'interest or similar consideration' etc. which may again lead to litigation.	It is recommended that: • Appropriate guidelines may be issued to clarify what the term 'interest or similar consideration' should include or exclude as the definition provided in the existing Section 2(28A) of the Act may not be adequate for the purposes of thin-capitalisation rules based on the definition of the term 'debt'. • Interest disallowed under other provisions (sections 40(a)(i) or 43B) should be specifically excluded from definition of "total interest". (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
	(v)	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> <i>Provided</i> that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise. <i>(2) For the purposes of sub-section (1), the excess interest shall mean an amount of <u>total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.</u>(emphasis supplied).</i> I. Issue Whether for purpose of determining amount of excess interest under section 94B(2), interest paid to third party lenders (i.e. other than associated enterprises) should be included in 'total interest paid or payable' or it should only include interest paid or payable to associated enterprises? Rationale: Sub-section (2) to section 94B refers to "an	With a view to resolve the issue discussed, it is suggested that for the purpose of computing 'excess interest' under section 94B(2), the term 'total interest paid or payable' should only include interest paid to the associated enterprise. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		<i>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]	
	(vi)	As per FDI Policy, 100% FDI towards infrastructure falls under automatic route. Foreign investor invest in India with combination of equity and debt. Further maximum debt is back by parent guarantee. The parent guarantee helps Indian borrowers to reduce the interest rate on their borrowing. Given high capital intensive nature of the infrastructure sector, reduced interest costs makes the project further viable. Disallowance / limitation of allowance of interest expense on instances where such borrowing is secured by guarantee by AE will adversely affect	<i>It is suggested that borrowings by Indian companies backed by corporate guarantee shall be fully excluded in this clause. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



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



Sr. No	Section	Issue/Justification	Suggestion
		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>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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
		b) Clarification on the term 'tax benefit' as defined under section 102(10) of the Act The term 'tax benefit' as defined under section 102(10) of the Act includes, — <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>(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</i> <i>(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or</i> <i>(e) a reduction in total income; 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'.</i> <i>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 of money should be ascertained based on the rate of interest charged under the Act for shortfall of tax payment under</i>



Sr. No	Section	Issue/Justification	Suggestion
		(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 recommendations¹, in cases of tax deferral, the only benefit to the taxpayer is not paying taxes in one year but paying it in a later year. Overall there may not be any tax benefit but the benefit is in terms of the present value of money. Further, as observed by the Expert Committee², 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.	section 234B of the Act. <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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
		c) India has signed the ‘Multilateral Instrument’ (MLI) in accordance with the Base Erosion Profit Shifting (BEPS) Action Plan 15 of the OECD, which, inter alia, deals with the denial of tax treaty benefits in certain cases of anti-abuse arrangements/transactions entered into by the taxpayer. The MLI provides for insertion of anti-abuse provisions (the PPT and the LOB provisions) in the tax treaties so as to deny tax treaty benefits in case of abusive arrangements/transactions being entered into by the taxpayer. The anti-abuse provisions inserted through the MLI would be effective once the same are ratified by both the signatories to the MLI. With India having signed the MLI, there could be a possibility that the same	<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</i>

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

²Page 47 of the Final Report by the Expert Committee on GAAR chaired by Dr. Parthasarathi Shome.



Sr. No	Section	Issue/Justification	Suggestion
		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>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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
198.	Section 115JAA(2A) - Restriction on carry forward of MAT/AMT credit and claim of FTC in relation to taxes under dispute - Restriction to be removed	In line with Rule 128(7), the Finance Act 2017 inserted second proviso to section 115JAA(2A) restricting quantum of MAT credit to be carried forward to subsequent years. The proviso provides that where the amount of FTC (Foreign Tax Credit) available against MAT/AMT is in excess of FTC available against normal tax, MAT/AMT credit would be reduced to the extent of such excess FTC. Similar restriction is imposed in S. 115JD(2) on AMT credit. Both the provisions are made effective from 1 April, 2018 i.e. will apply in relation to A.Y. 2018-19 and onwards. The rationale of aforesaid restriction/limitation is not clear. The restriction on quantum of MAT/AMT credit to be carried forward subjects taxpayer to duplicated MAT liability while denying the rightful carryover of MAT/AMT credit. The FTC is an alternative form of tax payment. For all purposes including for grant of refund or levy of interest, FTC is treated as advance tax paid to the extent the same is creditable against tax liability in India. Once MAT liability is admitted to be tax liability on income in India, there is no justifiable reason for treating FTC separately	<i>The restriction on carry forward of MAT/AMT credit may be removed.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		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.	
199.	Section 139(5) – Reduction in time limit for filing revised return – Request to bring back erstwhile time limit for filing of revised tax return at least in cases of claim of foreign tax credit	The Finance Act 2017 amended section 139(5) to provide that the time for furnishing of revised return shall be available upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier. This particularly impacts claims for any Foreign Tax Credit (FTC) in respect of the taxes paid by the individual assessee(s) in the overseas tax jurisdiction. Generally, the information/ final payment of foreign taxes/ tax return is unlikely to be available within the timeline for filing the revised tax return i.e. by the end of the relevant assessment year. As an example, USA follows calendar year as their tax year and the first due date of filing a USA income-tax return is April 15th of the following calendar year, meaning thereby, the USA income-tax return for calendar year 2018 will be required to be filed by 15th April, 2019. In a case of Indian income-tax return for tax year 2017-18, the due date to file a revised return as per the said amendment will be 31st March, 2019. In the above situation, the assessee may not have his final tax return available with him till 15th April 2019, hence, such assessee will not be able to claim the FTC of the final USA taxes paid by him in his Indian income-tax return as he may not have the final USA tax details by 31 March 2019.	<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> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
200.	Application for Permanent Account Number (PAN) in certain cases	W.e.f AY 18-19, as per section 139A of the Act, every person (including foreign entities), not being an individual, which enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more in a financial year (FY) shall be required to apply	<i>Section 139A. (1)(v) provides that every person being a resident, other than an individual, which enters into a financial transaction of an amount aggregating</i>



Sr. No	Section	Issue/Justification	Suggestion
		for PAN by the end of the FY in which it enters into such transaction. Further, the term 'Financial transaction' is not defined. - This is in contradiction to the provisions of Section 206AA of the Act read with Rule 37BC which exempt the foreign entities from obtaining PAN in case where the payment is in the nature of Royalty, Fees for Technical Services and payment in case of transfer of Capital Asset. - There may be instances where the foreign entities enters into financial transaction for a value more than Rs. 2,50,000 and there would be no tax liability due to favourable DTAA provisions. They will now be required to obtain PAN. This will create unnecessary hassle to the foreign entities and not be in line with of 'ease of doing business.	to two lakh fifty thousand rupees or more in a financial year and who has not been allotted a permanent account number shall, within such time, as may be prescribed, apply to the Assessing Officer for the allotment of a permanent account number. It is recommended that the benefit available under section 139A(1)(v) should be extended Non-Residents also. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
201.	Section 155(14A) - Claim of FTC pertaining to taxes which are under dispute in the foreign country – Clarification required on certain issues relating to period of limitation and documents which shall constitute evidence of settlement	Section 155(14A) provide that where the payment of foreign tax is under dispute, credit of such taxes will be available in India in the year in which the dispute is settled, on satisfaction of certain conditions. To give effect to this an enabling provision shall be inserted through which Tax Authority will rectify the assessment orders or an intimation order and allow credit of taxes in the year in which the taxpayer furnishes the evidence of settlement of dispute and discharge of foreign tax liability. However, the said amendment does not provide for time limit within which the Assessing Officer has to rectify the assessment order. This provision only gives a reference to section 154. Section 154 provides a time limit of 4 years for reassessment, excluding anything specifically provided under section 155. Issues may arise on what is period of limitation which may apply for section 155(14A) and how it should be applied. The said provision provides that the Assessing Officer shall amend the earlier order which denied FTC, if the taxpayer, within six months from the	(i) The time limit applicable for rectification of order may be clarified. Since all the sub-sections in section 155, provide for the time limit to be applied and some of the sub-sections provide for a different time limit, it may be expressly clarified that what is the period of limitation which may apply to cases covered by the section 155(14A). (ii) It may also be clarified that the period of limitation (e.g. if it is 4 years), should be 4 years from the end of the year in which the amended order is passed and it should not be the date of the original order. This is for the reason that if the dispute in the foreign



Sr. No	Section	Issue/Justification	Suggestion
		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. 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>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 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</i>



Sr. No	Section	Issue/Justification	Suggestion
			evidence for settlement of dispute: • Final assessment order/ final demand notice of the tax authority of the foreign country • Judgment of the Court of Law along with the final demand notice of the tax authority based on the judgement • Proof of payment of taxes • Self-declaration (SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)
202.	Section 194LC - Income by way of interest from Indian Company	a) Income by way of interest from Indian Company The Finance Act, 2012 inserted section 194LC to provide that the interest income paid by specified company or business trust to a non-resident shall be subjected to tax deduction at source at the rate of 5%. Section 115A was also amended to provide that such income will be taxed at the rate of 5%. Section 194LC(2)(ii) provides that for the purpose of deduction of tax at source at the rate of 5%, the interest payable by the specified company or business trust to a non-resident, not being a company or a foreign company, shall be the income payable by the specified company TO THE EXTENT TO WHICH 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	a) In order to bring out the real intent of the law, it is suggested that the section 194LC(2)(ii) may be reworded to provide that the interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company or business trust "IF such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment" (SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)



Sr. No	Section	Issue/Justification	Suggestion
		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.	
203.	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 1st October 2014. Under the aforesaid proposed amendment, the benefit of lower withholding tax @5% for overseas borrowing is extended up to 1 July 2017 and it shall apply to all long-term bonds and not merely restricted to infrastructure bonds as is the case under the relevant provisions of the existing Income tax Act. Further, the benefit of section 206AA(7) of the Act, shall be extended to all types of long term bonds including infrastructure bonds, which means PAN of beneficial holders of bonds shall not be mandatory for all types of long term bond issues in the international market. Hardships While the fiscal measure taken by the	<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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		Government to encourage the corporates to raise long term capital at competitive price for their capital expenditure are appreciated, there is an urgent need for making the proposed amendments effective from 1 April 2014 so that companies can take advantage of the prevailing opportune market conditions. In this connection, the global market conditions have been summarized below: ➤ The international debt markets are very strong and buoyant, with the Asia ex Japan G3 market seeing over US\$116bn in 2014 till date in issuance volumes, nearly 83% of total issuance in 2013. ➤ Investor liquidity remains very strong, and there are consistent fund flows back into emerging market and Asian bonds for the past 14 consecutive weeks. ➤ US treasury yields remain significantly lower than at the start of the year, as the markets gauge the outlook for the global economy, geopolitical risks and the expected actions of the Central Banks. 2.55% / 3.37%. ➤ US rates at 2.55% for 10 years and 3.37% for 30 years remain conducive for issuers looking to extend duration, with the 30-year US Treasury currently close to a 9-month low. ➤ Global credit market conditions remain very strong with credit spreads having tightened sharply over the past year. ➤ The demand for Indian credits has been extremely strong, with Indian credit spreads having tightened by 30-40 bps since 1 April and 80-100 bps since 1 February 2014. This has been driven by supportive technical, relative lack of supply and improved macro indicators. These favourable financial market conditions could get impacted in the short term by changes in the economic data emanating from the major	



The Institute of Chartered Accountants of India

Sr. No	Section	Issue/Justification	Suggestion
		economies as well as due to geopolitical factors such as the continued unrest in the Middle East.	
204.	Section 194LD - Income by way of interest on certain bonds and Government securities	As per Section 2(28A) of the Income-tax Act 1961, "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;" As per the provision of major DTAA, "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits; and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. As per ICDS, Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable. Discount or premium on debt securities held is treated as though it were accruing over the period to maturity. The above 3 definitions have led to the following confusion in both borrowers and lenders domain. 1. Borrower would now have to deduct tax on what amount? 2. If TDS is deducted on premium wouldn't that tantamount to tax on capital gains 3. Per provisions of section 194LD, the lower withholding rate would be applicable only on interest paid on bonds whose interest rates do not exceed the rate as specified by the Central Government in this regard (at present 15%). The debentures instruments comprise of two aspects a. interest rate b. redemption premium	<i>It is suggested that Clarity on the definition of effective interest rate i.e. whether or not it includes premium on redemption may be provided.</i> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>
205.	Section 195 –	Section 195(2) provides where a payer considers	<i>It is suggested that an</i>



Sr. No	Section	Issue/Justification	Suggestion
	a) Time limit for Issuance of "general or special order"	that whole of the sum being paid to a non-resident is not chargeable to tax, he may make an application to the Assessing Officer to determine by general or special order, the appropriate portion of the sum so chargeable. It may be noted that no time limit of passing such order has been prescribed in the Act, which causes undue hardship in genuine cases.	<i>appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer.</i> <i>Further, where an application is rejected, the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.</i> (SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
	b) 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 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	<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 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</i>



Sr. No	Section	Issue/Justification	Suggestion
		for paying” has been defined for the purposes of the foregoing provisions of Chapter XVII and section 285. Since section 285 is in respect of submission of statement by a non-resident having liaison office, the definition of “person responsible for paying” given in section 204 is not relevant in the context of section 285. Consequently, taking into consideration the above issues, section 204 needs to be appropriately amended. A penalty of Rs. 1 lakh is leviable under section 271-I for failure to furnish information or for furnishing inaccurate information under section 195. The penalty is quite high, considering that the reporting requirement may be relating to a transaction which is not be chargeable to tax. Also, while the meaning of “person responsible for paying” has been defined under the Act, “person responsible for collecting” has not been defined anywhere in the Act. The meaning of “person responsible for collecting” may be incorporated in the Act for clarity.	<i>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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
	c) 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. 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.	<i>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.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		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.	
	d) Penalty for failure to furnish information or furnishing inaccurate information under Section 195	The Finance Act, 2015 has introduced penalty (Section 271-I of the Act) in case of failure to furnish information or furnishing of inaccurate information as required to be furnished under Section 195(6) of the Act, to the extent of INR one lakh.	<i>It is not clear whether the penalty is qua the payment made or qua the transaction or qua the contractual obligations for a specific financial year. Therefore, the same should be clarified in a suitable manner.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
206.	Section 201 – Limitation period for Non-resident	Invocation of section 201 in case of a payer to a non-resident for not withholding appropriate tax and depositing the same in the Indian treasury There is no limitation period for invocation of this provision. This creates need for increasingly impractical period of indemnity being sought by a payer from the recipient. Where the payer is conducting very few or one-off transactions involving India, this creates inordinate uncertain Indian tax exposure for such payer.	<i>Limitation period should be provided as follows:</i> <i>(I) 4 years from the end of the financial year in which the transaction requiring tax to be withheld, took place;</i> <i>(II) Absolving the payer from this obligation if the payee non-resident files tax return in India and hence is now approachable by the tax department to be pursued for tax recovery, if any.</i> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF



Sr. No	Section	Issue/Justification	Suggestion
			DIRECT TAX LAWS)
207.	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. 271F has also risk of prosecution u/s. 276CC The TDS rates applicable for non-residents is generally the final tax payable by such non-residents. The information of payments to non-residents gets transmitted to Tax Department on real time basis through compliance u/s. 195(6) read with Rule 37BB (Form 15CA/B) and quarterly withholding tax returns. Hence, requirement of filing return has no real benefit to the Tax Department. On the contrary, it increases compliance burden for the non-residents and makes them liable for penalty or prosecution.	In line with recent exemption provided to non-residents from obtaining PAN for avoiding higher TDS u/s. 206AA if they furnish TRC, they should also be relieved from return filing obligation where payer has already withheld taxes and reported in Form 15CA/CB. Additionally, the non-residents shall also be relieved from filing Form 3CEB and maintaining transfer pricing document in case of transactions with associated enterprises on which appropriate TDS has been deducted. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
208.	TDS on interest on NRO account	Presently, Indian residents who earn interest on their Indian bank accounts are liable to pay TDS on amounts over and above Rupees 10,000. However, when it comes to NRIs they are not allowed this benefit on their NRO accounts. All interest earned in NRO accounts is subject to a TDS rate of whopping 30%. In majority cases, the NRI's are not able to file for refunds due to small amount as the cost of filing is more than deduction.	Commercial banks may be instructed by proper authority, not to deduct TDS on NRO account earning interest upto INR 10,000 per annum. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
209.	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 which are outside the	In view of the issues detailed, it is suggested that suitable amendments may be carried out in the Chapter VIII of the Finance Act, 2016. Particularly, after 1 April 2017, GAAR will ensure that artificial avoidance of taxable presence is not likely to remain tax protected for the non-residents. (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		ambit of the Income-tax Act, 1961. It is recommended that the provision be withdrawn or be enacted under Act.	
210.	Tax consolidation Scheme	In India, separate entities are incorporated based on their specialization in various lines of businesses (like manufacturing, trading, retail, infrastructure etc.) by the parent company. Separate companies are incorporated to attract investors which suits their needs. Investors are more likely to invest in a well-structured organisation. Because of commercial compulsions, the business houses are forced to have many subsidiaries under one parent. The group as a whole and the tax Department face many challenges. Some of them are:- • Each Entity is considered as separated entity and therefore required to file a separate income tax return, involving huge cost of Income Tax compliance by tax payer. • Each entity is assessed/ scrutinized separately resulting in litigation cost for each entity. Significant administrative costs are incurred by the Income tax Department in keeping track of records and assessing multiple subsidiaries. • Apart from cost, a lot of efforts are required by both tax payer as well as Income tax Department for undertaking compliance. Tax consolidation or combined reporting is a regime adopted in the tax or revenue legislation of a number of countries which treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes. The head entity of the group is responsible for all or most of the group's tax obligations such as paying tax and lodging tax returns. In terms of mechanics, all transactions between	<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> (SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)



Sr. No	Section	Issue/Justification	Suggestion
		the group companies of the consolidated group are ignored for tax purposes. Benefits – i. Tax consolidation scheme would help to centralize the planning and payment of tax by the parent company. ii. It is common in India that the parent company engaged in various lines of businesses incorporate many subsidiary companies. Since the market is volatile, it may happen that one company is incurring losses and other is earning profits. At a group level, the tax outgo would be more as under the Income-tax Act at present, there are no provisions to set off loss of one group-company with another profit making group-company. Under tax consolidation, the company can set off the losses of one inter group company with the profits of another company. Tax consolidation would take care of such situations which facilitate development of new businesses of challenging nature such as retail or telecom. Where financial risks are isolated in a new company but at the same time tax revenues and losses can be consolidated. iii. Any unused foreign tax credit by one company can be used by the other affiliates within the group. iv. Currently, in the Income-tax Act, 1961 the Domestic Transfer Pricing provision requires all the intercompany transactions to be at Arm's Length Price and need to be reported. Under the consolidated tax scheme such intra group transactions would be net off and thereby will reduce the time and compliance cost of the tax payer and administrative cost of the Income-tax Department.	



<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		v. In group taxation all transactions between group companies are ignored for tax purposes. This will help in tax free movement of assets across the group which would aid in internal restructuring. vi. In India, each company is individually liable for separate tax assessments. By introducing the tax consolidation scheme, the parent company would act as an agent in all the tax matters. vii. The number of litigations pending with the tax department would also reduce and thereby reducing the administrative cost of the Income-tax Department. viii. In the long run such a regime would not negatively impact the overall tax revenues as tax offset of carry forward losses/depreciation is already allowed under the Income-tax Act, 1961, accordingly any tax offset claimed by the individual taxpayer would be offset when the aggregate approach for the economy as a whole is considered. ix. Member of the group companies obtaining for tax consolidation can enter into an arrangement with Income Tax Department/CBDT for a nominated member of the group to be in liaison with Income Tax Department/CBDT, such that all payments of tax flow through that nominated company. x. It is believed that for capital intensive sectors like infrastructure and financial services introduction of such a progressive tax regime would be beneficial and fair to the taxpayer. xi. The tax consolidation regime has been adopted in tax legislations of a number of foreign countries like Australia, France, Germany, Italy, Japan, Korea, Spain, USA	



Sr. No	Section	Issue/Justification	Suggestion
		etc. These countries have not only successfully implemented the said regime but also created a positive impact on business with significant reduction of compliance and litigation cost. xii. This will create a positive impact on business and provide a level playing field to the Indian companies. The tax consolidation regime also endorses the Government's efforts of "Ease of doing business in India" and assist in aligning the business and tax objectives of the industry. xiii. No. of tax exemptions are being reduced and very soon, no deduction/exemption will be allowed in computing taxable income. It is very logical to introduce tax consolidation scheme. Many mergers, demergers which are being done only to take advantage of tax losses will not be required. A snapshot of the tax consolidation regime in various jurisdictions is summarized in Annexure A	
211.	Provision for the employer to provide tax treaty benefits while calculating TDS	Under the current tax regime, there is no provision under the Act which enables an employer to consider admissible benefits under the respective Double Taxation Avoidance Agreements (e.g. credit for taxes paid in another country/ treaty exclusions of income etc.), while computing tax to be deducted under Section 192 at the time of payment of salaries to employees. Further, the foreign tax credit rules notified by the CBDT in June 2016 also does not contain explicit provision for providing credit for taxes paid in another country by the employer at the time of deduction of tax on salary payments. Due to the above, it creates cash out-flow issues to the employees (migrating employees coming to and leaving India) who are initially subject to full TDS by their employers and thereafter required to claim refunds on account of tax treaty benefits while filing their income tax return. Many of these employees may complete their assignments and leave India prior to obtaining their tax refunds	<i>It is recommended to provide for claiming relief available under the tax treaty, at the time of TDS.</i> <i>(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</i>



The Institute of Chartered Accountants of India

<i>Sr. No</i>	<i>Section</i>	<i>Issue/Justification</i>	<i>Suggestion</i>
		which also creates hardships with respect to receiving back the refund amounts.	

X-X-X