PRE BUDGET MEMORANDUM 2023

Direct Taxes and International Taxation

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

PRE-BUDGET MEMORANDUM – 2023

DIRECT TAXES
AND
INTERNATIONAL TAXATION

THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA

NEW DELHI

PRE-BUDGET MEMORANDUM – 2023
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 - 2023 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 2023-24.

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

PART A : SUGGESTIONS RELATING TO THE POLICY & PROVISIONS OF INCOME-TAX ACT, 1961		**1**
CHAPTER I PRELIMINARY		**3**
1.	Section 2(1B) - Definition of Amalgamation	3
2.	Section 2(14) – Treatment of LIP as capital asset	3
3.	Section 2(18) – Company in which public are substantially interested	4
4.	Section 2(19AA) - Demerger	5
5.	Section 2(19AA) – Demerger clarification	8
6.	Section 2(31) - Definition of person	10
7.	Section 2(41A) - Definition of resulting company	11
8.	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	12
9.	Section 2(42A) – Request to include all immovable properties	12.
10.	Section 4 - Charge of Income-tax	12
11.	Section 5 - Scope of Total Income & Section 7 - Income deemed to be received	14
CHAPTER III INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME		**17**
12.	Section 10 – Income not forming part of Total Income -Exemption for Dividends under certain circumstances	17
13.	Section 10(10D) – Certain issues	20
14.	Section 10(11) & 10(12) – Request to reconsider and/or raise the limit of Rs 2,50,000/5,00,000 of taxability of Interest on various funds where income is exempt	21
15.	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)	22
16.	Section 10(13) - Payment from approved superannuation fund	23
17.	Section 10 – Special exempt allowance to employees engaged in infra industry	23
18.	Section 10(23C) - Annual Receipts	24
19.	Section 10(23C) and Section 11 - Benefit of both the provisions be available to the assessees concerned simultaneously	24
20.	Section 10(23C)/11 - Benefit of carry forward of Excess Application of Income in case of Charitable Trust	25
21.	Section 10(23FB) - Tax exemption for Alternative Investment Funds – Venture Capital Funds	27
22.	Section 10(32) - Income of minors - to increase exemption limits	28
23.	Section 10(38) –Grandfathering provisions for shares received by way of inheritance	28
24.	Section 11 -Income from property held for charitable and religious purposes	28
25.	Section 11 - Restructuring of provisions regarding charitable institutions	31
26.	Section 12 - Income of trusts or institutions from contribution	33

27. Section 12(1) - Contribution received in kind without specific direction to form part of the corpus under tax net 34
28. Section 12A/12AB – Status of registration application 34
29. Section 12AB – Process of registration/renewal of registration be completely digital without any human intervention 35
CHAPTER IV COMPUTATION OF TOTAL INCOME 36
PART A : Salaries
30. Deduction to salaried assessees - Payment for notice period 36
31. Section 16 – Regular enhancement of standard deduction basis cost inflation index 36
32. Section 16 – Expenses incurred due to COVID19/lockdown/Work from home 37
33. Section 23 - Deduction of interest from house property 38
34. Section 23(1)(c) – Vacant house property 38
35. Section 23(5) - Tax on unsold properties held as stock in trade 38
PART D PROFIT AND GAINS OF BUSINESS AND PROFESSION
36. Section 28(iiia) – Sale of license 39
37. Section 28(iiid) – Duty Entitlement Pass Book Scheme no more in existence 39
38. Section 28(va) – Taxability of non-compete fees in the hands of payer 40
39. Section 28(via) - Conversion of Stock-in-trade into Capital Asset 40
40. Section 32 – Depreciation on Goodwill and its adverse impacts on banks and other similar assessees 40
41. Section 32 - Depreciation in case of slump sale 42
42. Section 35AD - Expenditure on Specified Business 43
43. Section 35D - Amount paid for increase in authorized capital 44
44. Section 36(1)(va)/43B - Disallowance towards PF/ESIC in respect of Employee contribution paid after the due date under the Respective Act 44
45. Section 37 – Corporate Social Responsibility expenditure 46
46. Section 37 - Deduction for ESOP expenditure 47
47. Section 40(ba) – Amendment w.r.t. taxation of consortiums/JVs/ AOPs 47
48. Section 40(b)(iv)/(v) – Raise in allowable expenses in the form of interest on capital and remuneration to working partner 48
49. Explanation 5 to Section 43(1) – “building” to be replaced by “assets” 48
50. Section 43B - Clarification regarding deduction on payment of interest only on actual payment – Need to provide carveout for conversion in genuine cases like conversions under IBC, 2016 49
51. Section 43CA - Increase the safe harbour threshold subject to specified conditions – Request to further relax the conditions 49

52. Section 44AB – Increase in threshold limit from Rs 5 crore to Rs 10 crore subject to conditions specified for person carrying on business – Certain concerns/issues to be addressed 50

53. Section 44AB -Applicability of audit in specific case 54

54. Section 44AD - Monetary limit for presumptive basis 55

55. Section 44AD & section 44ADA – Remuneration and interest to partners 55

56. Benefit of presumptive taxation to LLP - Section 44AD 55

57. Section 44AE – Simplification of presumptive taxes on heavy goods vehicle 56

58. Section 44ADA - Special provision for computing profits and gains of profession on presumptive basis – Issues and concerns arising there from to be addressed 56

(a) Threshold limit of Rs 50 lakhs may be increased 56

(b) Rate of estimated income @ 50% too high 57

59. Section 45(5A) - Taxation of joint development agreements (JDAs) 58

60. Limited Liability Partnership (LLP) - 58

(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 58

(b) Consequential amendment required in section 47(xiiib) 59

(c) Section 47(xiiib) - Conversion of company into LLP – Clarification required relating to additional condition 60

61. Section 47 – Request to include family settlement in the exceptions and needs clarity for shares in LLP/Company 60

62. Sections 47(x) & (xa) and 49(2A) - Capital Gain on Conversion of Foreign Currency Exchangeable Bonds (FCEB) and other Bonds & Debentures 61

63. Section 50B - Special provision for computation of capital gain in case of slump sale 61

64. Section 54 - Capital gain on sale of property used for residence 62

65. Section 54/54F – Streamlining and capital gain exemption for investment 63

66. Section 54EC - Time Limit for investment in specified bonds 63

67. Section 54EE – Request to notify fund 65

68. Section 55(2)(ac) – Clarification required to determine the cost of acquisition in case of Merger/ Demerger etc. 65

69. Reference to the Valuation Officer - Section 55A 68

PART F : INCOME FROM OTHER SOURCES .DETAILED SUGGESTIONS

70. Definition of the term relative - Explanation to Section 56(2) (vii) 69

71. Section 56(2)(x) - Limitation Period of 12 months of receipt may be relaxed to at least 24 months considering certain factors beyond the control of payer 70

72. Section 56(2)(x) – Need for enabling flexibility in certain circumstances 71

73. Section 56(2)(x) – Clarification w.r.t. issue of shares 72
74. Section 56(2)(x) – Certain exceptions to be provided w.r.t. conversion 73
75. Section 56(2)(x) – Certain other concerns to be addressed 73
76. Section 57 – Removal of restriction of deduction of interest expense from dividend income upto 20% of such dividend income 74
77. Section 60 - Transfer of Income where no transfer of assets 75
78. Section 68 - Cash credits – Provision for appropriate exceptions/carve outs for exemptions for loan taken from specified entities 77
CHAPTER VI : AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS 79
79. Section 72 – Insurance industry concerns 79
80. Section 71(3A) - Loss from House Property 79
81. Section 72A - Carry forward of losses in case of amalgamation or merger for service industry 80
82. Section 78 – Issue of carry forward and set off of losses of an LLP 80
83. Section 79 – 81
(a) Carry forward and set off of loss in case of eligible start-ups - Condition to be further relaxed 81
(b) Insertion of third proviso in Section 79 - relief for change in shareholding of subsidiaries pursuant to resolution plan 82
84. Section 79 - Carry forward and set-off of losses in certain cases 83
85. Section 79 – Covid19 concerns 84
86. Section 79- Carry forward and set off of losses in case of certain companies 84
CHAPTER VIA : DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME 86
PART B – DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS
87. Section 80/80AC/139(3) – Disallowance to be made proportionately on the basis of delay in furnishing of return 86
88. Section 80-IBA – Need to prescribe a form/certificate 87
89. Section 80-IBA - Incentive to affordable housing 87
90. Section 80C – Various suggestions 87
91. Section 80C – Other than Life Insurance Premium payments 89
92. Section 80CCC – Enhancements of limit 89
93. Section 80DDB - Rule 11DD - Insert COVID-19 as eligible disease 90
94. Section 80EEA - Tax incentive for affordable housing 90
95. Section 80EEB - Tax incentive for electric vehicles/Deduction in respect of purchase of electric vehicle 94
96. Section 80G – Request to reconsider cap of 10% 95
PART C – DEDUCTIONS IN RESPECT OF CERTAIN INCOMES
97. Section 80PA – Applicability of MAT 95

98. Deduction in respect of interest on deposits in savings account - Section 80TTA 97

99. 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 97

100. Section 80U – Consequential amendments required due to the enactment of 'The Rights of Persons with Disabilities Act, 2016' w.e.f. 28.12.2016 98

CHAPTER X : SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX 99

101. Domestic Transfer Pricing [DTP] – Sections 92, 92BA, 92C, 92CA, 92D & 92E 99

a) Arm's Length Price vs Ordinary Profits 99

b) Advance Pricing Agreements 99

c) Documentation Requirements 99

CHAPTER XII : DETERMINATION OF TAX IN SPECIAL CASES 100

102. Section 115BAA and 115BAB – Request to allow deduction u/s 80G 100

130. Section 115BAB(2)(b) -scope may be enlarged 100

104. Section 115BAC – Mediclaim expenditure u/s 80D may be allowed/included and other concerns 100

105. Section 115BBDA - Request to recommend suitable amendments when applying provisions of section 115BBDA and section 115JC of the Income-tax Act, 1961 simultaneously 104

106. Section 115BBF – Rationalizing patent tax regime 106

107. Section 115BBE – Need to reconsider the high rate of tax 107

108. 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 107

109. Section 115BBH - Scheme for taxation of virtual digital assets (VDA) - Certain Concerns to be addressed 108

CHAPTER XII B : SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES 110

110. Section 115JB/115JC -– May be consider for Removal of MAT/AMT 110

111. Section 115JB - Insertion of clause (iih) in Explanation 1 to section 115JB - Downward adjustment of aggregate brought forward losses and depreciation u/s 115JB 110

112. Section 115JB -Minimum Alternate tax 112

113. Section 115JB – MAT implications for Ind AS compliant companies 112

114. Section 115 JB – Clarification regarding 'adjusted' 113

CHAPTER XII D : SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES 117

115. Section 115-O - Inclusion of loans within section 2(22)(e) 117

CHAPTER XII DA :SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES 120

116. Section 115QA – Effect on foreign investments 120

CHAPTER XII DE : SPECIAL PROVISIONS RELATING TO TAX ON ACCREDITED INCOME OF CERTAIN TRUSTS AND INSTITUTIONS 122

117. Section 122
a) Recovery provisions on trustees etc. – Section 115TD(5) 122
b) Section 115TD(5) - Period of 14 days insufficient 122
CHAPTER XIV : PROCEDURE FOR ASSESSMENT 124
118. Section 139 – Reduction in time to file belated and revised income tax return forms 124
119. Section 139 – Due date to file ITR for assessees 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 assessees liable to tax audit to 31st October of the AY 125
120. Amendment in section 139(1) and 139(5) 125
121. 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 126
122. Section 139(4) – A reasonable penalty may be imposed for belated filing after expiry of time allowed 128
123. 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) 128
124. Section 139 – Insertion of details of exempt income in the acknowledgement of ITR Forms 129
125. Section(s) 139(8A) & 140B - Provisions for filing of updated return – Certain concerns to be addressed 129
126. Section 139A – Amendment / surrender of PAN 132
127. Section 139A – Need for certain persons to mandatorily have PAN 132
128. Section 142A - Estimation of value of asset by Valuation Officer 133
129. Section 143(1)(a)(iv) – Automatic processing of income leading to increase in returned income basis audit report 134
130. Section 145 - Taxation of retentions money/margin money in the hands of contractors/sub-contractors 135
131. Section 145 – Reconsideration of notified Income Computation and Disclosure Standards 135
132. Provisions of Section 145A- Method of accounting in certain cases: Needs to may be omitted 136
133. 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 137
134. 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 137
135. Section 171 - Assessment after partition of a Hindu undivided family 140
CHAPTER XVII : COLLECTION AND RECOVERY OF TAX 141
PART B – DEDUCTION AT SOURCE
136. Section 192 – Need for clarity on TDS on family pension 141
137. Section 193 - No tax withholding on 'interest on securities' earned by a business trust defined as per section 10(23FC) 141
138. Section 194A- TDS on compensation received under Motor Vehicles Act 142

139.	Section 194A – Need to raise threshold limit from 5,000 to Rs 10,000	144
140.	Section 194A - Interest payments to NBFC	144
141.	Section 194C – Increase in prescribed limit	145
142.	Section 194H – Request to increase TDS exemption limit to Rs 40,000	145
143.	Section 194-IA- Issues	147
144.	Section 194-IA – Reduction in threshold limit to Rs. 30,00,000	147
145.	Section 194-IA – Issue in computing amount of tax to be deducted at source in view of amendment made	147
146.	Section 194J - Fees for professional or technical services	148
147.	Section 194J – Clarification for rate of TDS	148
148.	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	149
149.	Section 194N - Payment of certain amounts in Cash	151
150.	Section 194-O – Practical implementation issues	152
151.	Section 194-O – Clarification w.r.t. GST	153
152.	Section 194Q & section 206C(1H) – Simultaneous application creating issues and the new provisions require reconsideration	154
153.	Section 194R – TDS on benefit or perquisite – Need to clearly define the 'benefit' or 'perquisite - Other issues arising out of clarificatory Circulars issued	154
154.	Section 197 – Reduced rate of TDS for Joint Venture	157
155.	Section 197A - TDS on non-availability of PAN Cases	157
156.	Section 197A – Certain assessees may be allowed benefit	158
157.	Section 197A - Rationalizing TDS applicability on Merchant Discount Rate ('MDR')	158
158.	Section 204 – Issue w.r.t. appeal filing by Principal Officer u/s 201/201A	160
159.	TDS on Recharge Vouchers	160
160.	Section 206C – Concerns arising due to inclusions in TCS provisions to be addressed	161
PART C – ADVANCE PAYMENT OF TAX		
161.	Section 206C(1H) – certain other concerns	161
162.	Section 208 -Revision of Limit of advance tax	162
PART G-LEVY OF FEE IN CERTAIN CASES		
163.	Section 234C – Interest due to MAT application	163
164.	Section 234E – Day wise slab	163
165.	Section 244A - Rate of Interest on Refunds	164
166.	Section 245D – Existing applications may be disposed off under current provisions	164
CHAPTER XX : APPEALS & REVISION		**166**

167. Section 246A – Necessary amendment required enabling filing of appeal against penalty imposed by Assessing Officer under section 271J 166

168. Section 254 – Condition of pre-deposit of 20% of tax etc. for granting stay by the ITAT to be reconsidered 166

169. Section 255 – Faceless proceedings in ITAT in a jurisdiction less manner – Few concerns to be addressed 167

CHAPTER XX-B : REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX 169

170. Section 269ST - Issues(i)

CHAPTER XXI-PENALTIES IMPOSABLE 170

171. Section 270A inserted to provide for levy of penalty in case of under reporting of income and misreporting of income - Issues to be addressed 170

a) Penalty order under section 270A be made an order appealable before Commissioner (Appeals) under section 246A 170

b) Penalty for under-reporting of income 170

c) Order to specify the specific clause of under -reported or misreported income for levy of penalty under section 270A 171

d) Mere making of a claim which is not sustainable in law would not tantamount to furnishing inaccurate particulars for attracting levy of penalty 172

172. Section 270AA - Immunity from Imposition of penalty 173

173. Section 271AAB - Need to simplify penal provisions 173

174. Section 271AAB -Penalty where search has been initiated 173

175. Section 271AAD – Penalty for fake invoice – Stringent provision to be relaxed 174

176. Rationalization of Section 271D & 271E 175

177. Section 271FA – Clarity required regarding appealability of penalty order 176

178. Section 271H - Penalty for failure to furnish TDS/TCS statements 177

179. 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 179

180. Section 276C - Withdrawal of cases initiated against limited companies after winding up order 180

181. 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 181

182. Chapter XXII - Prosecution proceedings not to be imposed in case tax and interest paid 181

183. Initiation of prosecution 181

CHAPTER XXIII MISCELLANEOUS 183

184. Incentive to tax payers – Investment of certain percentage of tax as annuity for the benefit of tax payers as old age support 183

185.	Grievance redressal mechanism – Fixing of responsibility and accountability	184
186.	Tax effect of appellate orders favourable to assessee	185
187.	Case for withdrawal of surcharge and cess	185
188.	Schedule 4/Rule 5 – Codify timeline for approval of application for Recognised Provident Fund within 6 months	187
189.	Need to Simplify and Rationalise TDS Provisions - Flat rate @ 1% or 2% may be prescribed	187
190.	Addressing Confiscatory Provisions	187
191.	Uniform TDS Rates	188
192.	Face for Faceless	189
193.	One Nation One Tax	189
194.	Unveil the Secrecy/ Open Budget	190
195.	Realignment of Due Date(s) under Income-tax Law with other Laws	190
196.	No Retrospective Amendments	191
197.	Introduction of provisions on innovative measures like 'Loss Carry Back' – Need of the hour	191
198.	Section 288 - Appearance by Authorized Representative	193
199.	Request to consider amendment in Explanation to section 288(2) pertaining to definition of ' Accountant'	193
200.	Computation of MAT profit in case of companies undergoing Corporate Insolvency Resolution Process under the Insolvency Code, 2016	199
201.	Conversion of convertible notes into shares	200
202.	Section 43CA, 50C and 56 – Allowance of variation of 20% between stamp duty value and the sale consideration – Increasing the permissible variation and need for retrospective amendment	200
203.	Exemptions – Skill Development	201
204.	Tracking the un-spent portion of capital gain deposit – Levy TDS at the time of withdrawal	202
205.	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	202
206.	Schedule 4/Rule 8(i) – Ease of withdrawal from Recognised Provident Fund	203
207.	Reduction of Stamp Duty and Registration rates	204
208.	Capital gains tax exemption in case of merger/restructuring involving LLPs	204
209.	Taxation of ESOP in case of employees of eligible start-ups	205
210.	Rate of dividend taxation in hands of resident	205
OTHERS		**207**
211.	Issues arising from applicability of Companies Act, 2013 - Amalgamation	208
PART B — SUGGESTIONS FOR IMPROVING TAX ADMINISTRATION AND CITIZEN SERVICES		
212.	Section 154 - Mistake apparent from record	207

213. Section 154/155(14) - Different Methods of accounting followed by the deductor and deductee – Rule 37BA 208
214. Section 200 -Furnishing of TDS returns 209
215. Give RERA effect in Income taxation 210
216. Tax consolidation Scheme 211
217. Consolidation of Group losses 212
218. Carry back of losses 212
219. Need to reduce tax rate of partnership firms in line with corporate tax rate reduction 213
220. 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 213
221. Reconciliation of each payment made by deductor to avoid duplication of work of TDS return 217

PART C — SUGGESTIONS PERTAINING TO INTERNATIONAL TAXATION

222. Provisions regarding indirect transfer of capital asset situated in India - Section 9 220
223. Section 9 - Income deemed to accrue or arise in India 221
224. Cross-border merger 222
225. Section 92C(2) and Rule 10 CA - Range concept 224
226. Tolerance Band – Second proviso to section 92C(2) 225
227. Section 92C- Computation of arm's length price 225
228. Section 92CE - Secondary Adjustments 226
229. Section 92D 226
230. Section 92E- Transfer Pricing Report 227
231. Section 94A -Special measures in respect of transactions with persons located in notified jurisdictional area 228
232. Section 94B - Limitation of interest benefit provisions - certain concerns to be addressed 228
233. Section 95 - General Anti-Avoidance Rule 231
234. Application for Permanent Account Number (PAN) in certain cases 232
235. Section 194LC - Income by way of interest from Indian Company 233
236. Section 195 – 234
a) Time limit for Issuance of "general or special order 234
b) TDS on payments made through credit cards 234
c) Consequential amendment required in section 204 235
d) Applicability of Rule 37BB read with Section 195 for making remittances outside India 236
e) TDS on sale of Residential Property by Non-Residents 237
237. Section 201 – Limitation period for Non-resident 238

238. Chapter VIII of the Finance Act, 2016 - Equalisation Levy - Issues to be addressed 238
239. Definition of “assessee” 239
240. Enhancing scope of Taxation of digital income 240
241. Section 142(2A): 241Cases where higher price is determined by custom department for imposing duty should be considered for special audit 241

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(1B) - Definition of Amalgamation***	Section 2(1B) of the Act provides for definition of Amalgamation in relation to the companies. The definition also contains various conditions to be satisfied for the amalgamation to be treated as tax neutral under the Act. The conditions contained in item (iii) of the said clause is that the shareholders holding at least three fourth in value of shares in the amalgamating company immediately before amalgamation should become shareholders of the amalgamated company. It is a known fact that the Amalgamation is given effect from the appointed date whereas the shares are issued on the effective date. Generally, there is time lag between the Appointed date and the effective date. In case of change in the shareholding in between the two dates, it would not be able to comply with the condition if read literally. It is also a fact that shares can be issued to the shareholders of the amalgamating company only after the effective date as shares cannot be issued retrospectively from the Appointed date. In order to clarify the position and avoid any litigation on the matter, it needs to be provided that the condition needs to be satisfied with reference to the shareholders as on the effective date and not the Appointed date.	***It is suggested that the provisions of Section 2(1B) be amended to clarify that the shares are to be issued by the amalgamated company to the shareholders of amalgamating company as they exist on the effective date and not on the appointed date.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
2.	***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?	***It is suggested that LIP be treated as a capital asset falling within the definition of "property" under section 2(14) of the Act and accordingly be expressly clarified by amending the relevant provisions which would avoid unnecessary litigation. Indexation benefit (for premiums paid) will take care of inflationary impact - resulting in parity with other***

Sr. No	Section	Issue/Justification	Suggestion
			capital assets. ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
3.	***Section 2(18) – Company in which public are substantially interested***	Section 2(18) of the Act provides for the definition of "company in which public are substantially interested". This definition assumes importance as there is differential treatment under various provisions of the Act in respect of a company in which public are substantially interested vis-à-vis other companies. Under item (b), the company which is "not a private company" as defined under the Companies Act only are qualified to be included subject to satisfaction of the conditions specified therein. Further, under the Companies Act, 2013, while the definition of "private company" is there, the definition of public company provided under section 2(71) introduces a legal fiction under which a "private company" is deemed to be a public company for the purposes of the said Act. Section 2(71) is as under: "public company" **means a company which-** (a) is not a private company and; (b) has a minimum paid-up share capital (omitted), as may be prescribed: Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company for the purpose of this Act even where such subsidiary continues to be a private company in its articles; An argument can be raised, leading to litigation, that the legal fiction of a private company being deemed to be public company is only restricted to the Companies Act and does not extend beyond that. It is clear that being a deemed public company, the company is bound to follow same regulatory requirements as a public company under	***It is suggested that section 2(18) may be amended to:-*** ***(i) clarify that a deemed public company under Companies Act is "not a private company", and*** ***(ii) a foreign subsidiary, if whole of the share capital of such subsidiary is held by a company in which public are substantially interested, shall be deemed to be a company in which public are substantially interested.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		the Companies Act and therefore for the purposes of Section 2(18) also considering the said company as not a private company is not in any manner contrary to the object and purpose of the said section. **It is therefore, necessary to clarify that deemed public company under the Companies Act shall be considered as not a private company for purposes of Section 2(18).** Further, there is lack of clarity regarding the status of foreign subsidiary / company. The Companies Act 2013, is silent on nature of subsidiaries incorporated outside India by Indian companies. The laws of host country apparently would govern the status of such subsidiary companies. However, clarity is necessary from the Income-tax Act perspective as such classification has tax implications like issues of deemed dividend etc. Therefore, while there may not be need for clarity from Company Law perspective considering its object and purpose, the same cannot be said for the Income-tax Act. **It is imperative that status of the foreign company particularly subsidiary of Indian company needs to be clarified. It is suggested that if the foreign company is wholly owned subsidiary of a company which is a company in which public are substantially interested then the foreign Subsidiary should be considered a "company in which public are substantially interested".**	
4.	***Section 2(19AA) - Demerger***	The existing provisions of Section 2(19AA) define the "demerger" and if the demerger carried out as part of corporate restructuring satisfies the condition, then tax neutrality is ensured both for the companies involved and shareholders. The tax neutrality is both from capital gains and the dividend taxation.	***It is suggested that section 2(19AA) may be amended to include in the definition of demerger, the corporate divestiture in form of spin-off under which a parent company transfers its shareholding in a subsidiary to its shareholders.***

Sr. No	Section	Issue/Justification	Suggestion
		Listed companies generally carry-on different businesses which are distinct and diverse from each other through the subsidiaries given the applicable regulatory environment or different risk profile or due to different set of investors for different business segments. At a certain stage of growth or development of business of that subsidiary, a natural preference would be to list that subsidiary to secure its future investments and growth or to benefit from improved access of capital, an increased global profile and for greater access to liquidity or to give exit to the private equity investors etc. Listing of a company is always beneficial to the company, to the investor, and to the public at large. It also adds to the economic activities in the country. An initial public offer (IPO) is one of the ways a company can get listed. To list a company through an IPO process is a time consuming and a high-cost event. One of the best international practices for simple and easier listing of a company could be - a listed company distributes its shareholding in a subsidiary to its shareholders. This is form of corporate divesture and is a category of demerger known in commercial world as "Spin- off". After the distribution is completed, the spun off company is no longer a subsidiary of the parent and the parent's shareholders hold not only the parent's stock but also the subsidiary's stock. As the parent is publicly held company, the subsidiary also becomes a publicly held company subject to necessary enabling provisions. The Income-tax Act recognizes the importance of business reorganisation undertaken by the groups for various commercial reasons. In order to facilitate these reorganisations, the Act provides for tax neutrality for the same. A reference can be made to the Explanatory	***Further, to ensure that distribution by the holding company to its shareholders of the shares of the subsidiary is not taxable as dividend, an exclusion also needs to be made for such distribution in case of Spin off from definition of dividend under section 2(22). Initially, such an inclusion be made only in respect of parent company being a listed company.*** ***Draft of suggested amendment(s) is placed below:*** ***(A) The provisions of section 2(19AA) may be amended as under –*** ***2(19AA). "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of -*** ***(a) its one or more undertakings to any resulting company in such a manner that-*** ***----------*** ***(b) its specified shares to all its shareholders in proportion of their shareholding in such company;*** ***……..*** ***Explanation 7. For the purposes of this clause, "specified shares" means whole of the share capital as is held by demerged company in a subsidiary and the demerged company, being a company the shares in which (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) are on the day of transfer listed on a recognized stock exchange.*** ***(B) The provisions of section 2(19AAA) may be amended as under –***

Sr. No	Section	Issue/Justification	Suggestion
		Memorandum to the Finance Bill 1999. Under the existing provisions of the Act, tax neutrality has been provided for both amalgamation and demerger of companies subject to certain conditions and also to the intra group transfer of assets between Subsidiary and Holding company. Presently, the Act provides for tax neutrality only for a specific kind of demerger where only a business undertaking can be demerged into a separate resulting company. The corporate divestiture in form of spin-off is not presently covered under the tax neutrality provisions. If the parent company distribute shares of subsidiary company, the said transaction would be considered as dividend distributed by parent company to its shareholders and accordingly fair market value of subsidiary shares received by the shareholder would be taxed as dividend income in the hands of shareholders. However, considering the commercial reasons and in line with the tax neutrality provided to corporate reorganisation in form of amalgamation and demerger, there is need for providing tax neutrality for corporate divestiture by way of spin off subject to conditions. Providing tax neutrality for spin-off in case of a listed company would only result in deferral of taxes for a limited period. If there is no tax neutrality the tax on dividend gets charged up front. However, if tax neutrality is provided, the shareholder would pay capital gain tax subsequently as and when the shares of either company are sold by it and also continue to pay dividend tax on any dividends declared by either of the company post spin-off. The Global practice also indicates that many countries have provided tax neutrality to spin-off transactions as part	***2(19AAA) "demerged company" means the company whose undertaking or specified shareholding is transferred, pursuant to demerger, to a resulting company or the shareholders as the case may be;*** ***(C) The provisions of section 2(22) may be amended as under –*** ***2(22) "dividend" includes—*** ***----------*** ***but "dividend" does not include—*** ***-------*** ***(v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company);*** ***(vi) any distribution of specified shares under a scheme of demerger by the demerged company to the shareholders of such company.*** ***(D) The provisions of section 2(41A) may be amended as under –*** ***2(41A)."resulting company" means –*** ***(a) one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger; or*** ***(b) the subsidiary company, the***

Sr. No	Section	Issue/Justification	Suggestion
		of their tax regime related to corporate reorganisation. The broad contours of policy followed by some advanced economies indicates that basic emphasis of the countries, while giving tax neutrality to spin-off transactions, is to impose conditions so that it is not an abusive transaction. Certain conditions relating to control prior to spin-off, distribution of sufficient level of shareholding and active business being the subject matter of transaction are provided for to ensure that abuse of the provisions are avoided. Under the existing provisions of the Act relating to tax neutrality to business reorganisation also, certain conditions have been imposed before neutrality is granted. The tax neutrality can be provided for spin-off transactions on the lines of existing provision for demerger of the company. **Further, initially the benefit may be restricted to spin-off being undertaken by listed company. This will ensure that there is no risk of any abuse of the benefits.**	***shares of which are transferred in a demerger by the demerged company to its shareholders.*** ***(E) The provisions of section 47 may be amended as under –*** ***47. Nothing contained in section 45 shall apply to the following transfers :—*** ***----------*** ***(vie) any transfer of specified shares by the demerged company to its shareholders, in a scheme of demerger;*** ***(F) The provisions of section 56(2)(x) may be amended as under –*** ***56(2)(x)-----*** ***Provided that this clause shall not apply to any sum of money or any property received—*** ***(IX) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vie) or clause (vii) or clause (viiac) or clause (viiad) or clause (viiae) or clause (viiaf)] of section 47; or*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
5.	***Section 2(19AA) – Demerger clarification***	Section 2(19AA) of the Act provides for the definition and conditions under which a demerger involving transfer of an undertaking from a company (demerged company) to another company (resulting company) shall be tax neutral. One of the conditions mentioned in sub-clause (ii) of the said clause is that all liabilities related to the undertaking immediately before demerger become the liabilities of the resulting company. Further, Explanation 2	***It is suggested that the provisions of clause (19AA) of Section 2 be amended to clarify that for the purposes of Explanation 2(c), whether it is gross value of assets or net assets (after excluding assets corresponding to liabilities in clauses (a) and (b) as aforesaid).*** ***(SUGGESTION FOR***

Sr. No	Section	Issue/Justification	Suggestion
		to the said clause provides elaboration in respect of liabilities to be included and transferred to the resulting company. The said Explanation is as under:- "Explanation 2.—For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include— (a) the liabilities which arise out of the activities or operations of the undertaking; (b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and (c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger." There is lack of clarity in respect of the apportionment of general or multipurpose borrowings. It is not clear as to whether for apportionment only gross value of assets has to be taken or the net value after reducing specific liabilities related to the assets has to be considered. This ambiguity at times is leading to avoidable controversies and litigation. It is therefore suggested that necessary clarity be brought in the section by clarifying as to whether gross assets shall be taken in computation of apportionment or the net assets (i.e assets as reduced by specific liability related to an asset) shall be taken. The same clarification would apply to both the numerator and the denominator of the apportionment formula.	***RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
6.	***Section 2(31) - Definition of person***	Section 2(31) of the Act provides for the definition of the term "person". The status of person is critical and is the cornerstone of taxation under the Act. Over the period of past several years, several special taxation regimes have been put in place in respect of various trusts like Special regime for taxation of Securitisation Trusts contained in Chapter XII-EA of the Act, Special regime for taxation of Alternate Investment Funds (AIFs) contained in Chapter XII-FB and Special regime for taxation of Business trusts (REITs and INViTs) under Chapter XII-FA etc. However, there is no clarity in respect of status of these trusts as to whether they are Individual, AOP or BOI. There have been in past, certain judicial rulings which are clearly not applicable to the changed legal position by incorporating these special regimes. Further, there are large and diverse number of unit holders which are beneficiaries of such trusts. This has led to different treatments both by the taxpayers and also, the tax department leading to avoidable controversies and litigations. It is suggested that necessary clarity needs to be provided in respect of their status as a person under the Act. It would be preferable that trusts are given a separate category and enumerated in the definition of person. Apart from above, there is also a case for Co-operative Society assessee to have a separate status as person under section 2(31). Already, there are separate tax rates specified for such co-operative society assessee since long and the time has come to codify the same in the Act itself. In the absence of status as a specific person for co-operative society taxpayer, such assessees have to face certain difficulties. Currently, a lot of co-operative societies are being formed under the respective state laws regulating	***It is suggested that section 2(31) of the Act may be amended to specify the status of various trusts like AIFs, Business Trusts and Securitisation Trusts etc. with a number of unit holders being beneficiaries. Further, it is also suggested to provide a specific status to co-operative societies assessees under section 2(31) as already separate tax slabs are enacted for such assessees.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		the co-operative societies. In case, a separate status is provided in the Act itself for co-operative society assessee, it would be easier for them to comply with provisions under the Income-tax Act, 1961.	
7.	***Section 2(41A) - Definition of resulting company***	Section 2(41A) provides definition of the resulting company in context of demerger which is defined under Section 2(19AA). As per section 2(19AA)(iv), one of the condition for tax neutrality of the demerger under the Act is that "the resulting company issues, in consideration of demerger, its shares to the shareholders of the demerged company". Therefore, it is resulting company which must issue its shares. Section 2(41A) containing definition of resulting company provides as follows ""resulting company" means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issue shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger;" From the above definition by inclusion of phrase "(including a wholly owned subsidiary thereof)" conveys a meaning that where an undertaking is demerged to a wholly owned subsidiary then both holding company and the subsidiary are resulting company. The implication are therefore, that in a demerger a parent of the demerged company can issue its shares to the shareholders of the demerged company instead of the subsidiary to which the undertaking has been transferred. This lack of clarity as to whether an	***It is suggested that section 2(41A) may be amended to clarify that where the demerger of an undertaking is to a company which is wholly owned subsidiary then both the company to which the undertaking is transferred and holding company shall be treated as resulting company for purposes of demerger related provisions particularly in context of issue of shares as consideration of demerger.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		option exists that either the subsidiary or its holding company can issue its shares as a consideration for the demerger has led to avoidable controversy and potential litigation. The intention of the policymakers must be clearly brought out and it needs to be clearly mentioned that the shares of either parent or the subsidiary can be issued in consideration of demerger in case where such subsidiary is a wholly owned subsidiary.	
8.	***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 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long-term capital asset. The same is done to promote the real estate sector and to make it more attractive for investment. **Issue** Consequential amendments for reducing the holding period of immovable property from 3 to 2 years is required to be made in sections 54, 54B, 54D and 54F in line with the amendment in section 2(42A). At present, these sections restrict transfer of new assets purchased for 3 years.	***It is suggested that consequential amendments may be made in sections 54, 54B, 54D & 54F so as to enable the holding period of the new asset purchased to be reduced to 2 years from 3 years in case of land and/or building.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
9.	***Section 2(42A) – Request to include all immovable properties***	Section 2(42A) was amended for land or building (reduction in holding period from 36 months to 24 months), 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.	***It is suggested to amend section 2(42A) further so as to include all immovable properties within its purview.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
10.	***Section 4 - Charge of Income-tax***	Section 4 of the Act provides for charge of the income-tax. It provides that income tax shall be charged in respect of total income of the previous year of every person at the rate specified in the Act or the Finance Act of the relevant year. The charging section 4 of the Act provides for levy of tax in respect of "Total income". "Total income" is defined in section 2(45) of the Act to mean "the total amount of	***It is suggested that appropriate amendment may be made to clarify that receipts/accrual of money which is in the nature of income only is taxable under normal provisions as well as MAT.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		income referred to in section 5, computed in the manner laid down in this Act". The material portion of section 5 reads as under:- "5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes, all income from whatever source derived which-" Thus, the "total income" consists of all items of "income" as defined in clause (24) of section 2 of the Act, 1961. The charge of tax under the Act is thus in respect of items of receipt which are in nature of income. While it is true that definition of income as provided under section 2(24) of the Act is inclusive definition and therefore of wide amplitude but at the same time the fact is that for inclusion under the scope of chargeability the receipt should have characteristics of being income. Further, the capital receipts as a general proposition are outside the scope of the Act, subject to legal fiction being created in respect of specific items included in the definition of income over period of time. Section 115JB of the Act, deems the book profit, subject to the adjustment provided under the said section to be deemed to be total income for purpose of computation of Minimum Alternate Tax (MAT) liability of the company. However, what can be taxed under section 115JB of the Act is the "total income" which is income as defined in section 2(24) of the Act and capital receipts which cannot form subject matter of the charge of tax under section 4; cannot form part of "total income" and cannot be subjected to tax either under the normal computation provisions or under section 11 5JB of the Act. The absence of provision in section 115JB of the Act for exclusion of such capital receipt credited to the profit and loss account cannot result in its taxation. The norm of the Act is to provide for specific inclusion in respect of capital receipts, therefore in absence of any specific	

Sr. No	Section	Issue/Justification	Suggestion
		provision directing inclusion of capital receipts in computation under section 115JB, the capital receipts cannot be included. A charge cannot be created by implication particularly when the taxing power under the Constitution is in respect of "income" and not capital receipts. Even if the intention behind introduction of section 115J (predecessor of section 115JB) is seen in the Circular no. 495 dated 22/09/1987, para 36 states that by virtue of various tax concessions and incentives, certain companies making huge profits and also declaring substantial dividends, have been managing their affairs in such a way as to avoid payment of income-tax, and to plug such loopholes, section 115J was introduced. Thus, never the intention was to tax something which is otherwise not chargeable to tax. Recently there have been spate of rulings of Judicial Authorities including High Courts wherein it has been held that capital receipts are not liable for inclusion under MAT provisions. Considering the intent and spirit of the provisions of MAT, it is necessary that the provisions are amended to specifically clarify that an item of receipt which is not in nature of income like capital receipts and which are not chargeable to tax under section 4 would also not be included in book profits for MAT purposes. This clarification would lead to certainty in matter and avoid long term multiple litigations.	
11.	***Section 5 - Scope of Total Income & Section 7 - Income deemed to be received***	Section 5 of the Act provides for scope of total income. The taxability of income under the Act is dependent upon either receipt, or accrual or arising of income or deemed receipt, deemed accrual or arising of income. Therefore, the time when the income is received or accrued is very relevant to determine the taxability of any sum. Prior to Finance Act 2021, section 10(12) of the Act provided that any payment received from Provident Fund to which the Provident Funds Act, 1925 (19 of 1925)	***It is suggested that amendment be made to provisions of the Act to clarify the point in time when the interest accrued on PF (excess contribution) are taxable. It is suggested to tax interest income at the time of withdrawal.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		applied or from any other provident fund set up by the Central Government and notified in the Official Gazette was exempt from tax. Also, for a recognised provident fund, exemption with respect to the accumulated balance due and becoming payable to an employee was available in specified circumstances. The above exemption was available without any monetary limits. Finance Act, 2021 amended the above provisions. The amendment provided that the interest income accrued (on or after 1 April 2021) on the employees contribution to PF in excess of Rs 2.50 lakhs in a year shall be chargeable to tax (to be computed in a prescribed manner). Vide notification dated 31 August 2021, Rule 9D has been inserted in the Income-tax Rules, 1962 for computing the taxable interest relating to contribution in a provident fund or recognised provided fund, exceeding specified limit as mentioned above. There is lack of clarity in respect of the year of taxability of the interest accrued on the excess contribution. Section 10(12) refers to exemption in respect of "the accumulated balance due and becoming payable to an employee participating in a recognised provident fund to the extent provided in Rule 8 of Part A of the Fourth Schedule". Therefore, what is exempt is "accumulated balance due and payable" to an employee. The Part A of the Fourth Schedule contains various regulations in respect of the Recognised Provident Funds. The regulations place several restrictions on when the funds can be withdrawn by the employee. Therefore, it is not that the employee has a vested right over the accretion that takes place during the year so as to say that income has accrued to the employee the moment credit takes place. Further, the placement of proviso to section 10(12) also adds to	

Sr. No	Section	Issue/Justification	Suggestion
		the confusion as the main section refers to "accumulated balance due and payable" thereby deferring the operation of proviso till the time the accumulated balance becomes due and payable. It is essential for avoiding controversy in future regarding the year of taxability of the interest on excess contribution that necessary clarity is brought in respect of point in time when the income is said to accrue or receive by the employee. Section 7 of the Act provides for cases of deemed receipt of income under certain circumstances. The provisions of said section may be amended to include the accrual of interest on excess amount of contribution to be case of deemed receipt in the year of credit. It is suggested to tax interest income at the time of withdrawal, because there is in inflow of funds for a very long term, since this is considered as a retirement benefit.	

Chapter III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
12.	***Section 10 – Income not forming part of Total Income -Exemption for Dividends under certain circumstances***	Section 10 of the Act provides exemption in respect of various types of income contained in various clauses of the said section. Under the existing provisions relating to taxation of dividend, the dividend income is taxable in the hands of a shareholder under the head "income from other sources" at the applicable marginal rate. Further, no expenses other than interest (limited to 20% of the Dividend) is allowed while computing income chargeable to tax. Domestic company is provided deduction under Section 80M of the Act in respect of inter-corporate dividends received. The amount of deduction is limited to the amount which has been further distributed by the company before due date of filing of return for the relevant assessment year. In addition, the dividend income is also liable for tax under Minimum Alternative Tax (MAT). There is no relief from cascading effect of taxation under MAT even if the company has distributed dividends further to its shareholders. The deduction under section 80M being conditional upon further distribution of the dividend induces a distortion by creating high tax cost for reinvestment of funds received by the recipient entity. The forced capital outflow from the business due to tax distortion is not a desirable policy outcome in cases of genuine business activities needing funds at competitive costs. As an Example: If Rs 100 is the profit generated by a company. It pays tax of Rs 35 and distributes Rs 65 to its shareholder/ another company. The dividend received by the parent company is reinvested in the business and if it does not declare further dividend, within the due date of filing return, then a tax of Rs 22.75	***It is suggested that section 10 of the Act be amended to provide that a domestic company whose shares are listed on a recognized stock exchange or its subsidiaries shall be granted exemption in respect of any income by way of dividend received from a domestic company which is part of the same group. The same exemption shall apply to any dividend received from an InVIT set up by the listed company or its subsidiaries as sponsor. This exemption should ensure that relief from cascading taxation is provided under MAT.*** ***A draft of suggested amendment in section 10 is placed below:*** ***"(34AA) any income by way of dividends received by a domestic company from other domestic company or a business trust where such domestic company, the other domestic company or the business trust belong to the same specified group;*** ***Explanation: For the purposes of this clause, the expression "specified group "means a group of entities that includes,-*** ***(a) a company, shares in which (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) were as on the last day of the relevant previous year listed in a recognized stock exchange in India;*** ***(b) any subsidiary company of the aforesaid company whether or not shares in such a subsidiary are listed in a recognized stock***

Sr. No	Section	Issue/Justification	Suggestion
		@35%(including SC and Cess) leaves only Rs 42.25 to be available for reinvestment. Further, as and when the shareholder of the parent receives this amount as dividend, the Rs 42.75 would also suffer tax of Rs 14.78 at the Applicable marginal rate. Thus, total tax payable on corporate profit of Rs 100 is Rs 72.53. This may further increase if the number of company layers are more than 2. The reinvestment of internal generation within a group suffers high tax cost. Accordingly, the funds are forced to move out of the productive business cycle. Absence of any relief from MAT liability on dividend income irrespective of whether any retention of dividend has taken place at inter-corporate level or not compounds the problem of high tax cost significantly. It is a known fact that due to regulatory reasons a company is required to set up subsidiaries and special purpose vehicles. Similarly, engagement in diverse businesses at times necessitates creation of multiple entities. Presence of different subsidiaries in a corporate structure is therefore an outcome of both regulatory and genuine commercial requirement. If the tax induced distortions in allocation of capital cannot be eliminated, then the need of its reduction in a targeted manner is the most desirable policy response. It is on this fundamental basis that international best practice is to have "participation exemption" relief widely defined to avoid economic double taxation on inter-corporate dividends from shareholdings or participations. This ensures productive utilization of resources within a group without tax leakage. The International practice indicates that in majority of countries the inter-corporate dividend is either exempt or a participation exemption is provided based on certain conditions. The general principle followed is of granting deduction in respect of dividends received from other companies wherein the recipient company	***exchange in India;*** ***(c) a business trust referred to in sub-clause(i) of clause (13A) of section 2 in respect of which the said company or any subsidiary thereof is a sponsor as defined under clause (zz) of Regulation 2 of Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014;"*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		shareholding exceeds certain minimum threshold. It may not be out of place to mention that the requirement of further distribution, within limited time span, by the recipient company to avail deduction in respect of Inter-corporate dividends under the Act is a concept not being followed in most of the countries. Further, absence of any relief while computing tax liability under MAT results in continued undesirable cascading effect of taxation. The condition of further distribution under section 80M apparently is with the objective to prevent permanent deferral of taxes on dividends through utilization of interposed corporate entities. In case of private companies where the identity of shareholder and the company merges from a practical point of view due to lack of regulations and absence of governance norms, the indefinite deferral of taxes on dividends may be a realty that needs to be addressed. However, at the same time, **there is a need to have differentiated policy response in case of companies in which public are substantially interested vis-à-vis closely held companies.** It is undeniable fact that companies whose shares are listed on the recognized stock exchange and their subsidiaries are working under a stringent regulatory regime enforced by market regulators like SEBI and the Ministry of Corporate Affairs which ensures transparency and good governance. The fear of misuse contemplated in a closely held corporate structure may not be there in a structure involving companies in which public are substantially interested. Further, listed companies do follow a pattern of dividend distribution and having public shareholding ensures its compliance. The merit of differential regime for companies in which public are substantially interested has been well recognized in the various provisions,	

Sr. No	Section	Issue/Justification	Suggestion
		particularly anti abuse provisions, in the Act as enumerated below: 1. Exception from applicability of deemed dividend provisions under section 2(22)(e), 2. Exception from applicability of anti-abuse provisions of section 56(2)(viib) for companies in which public are substantially interested, and 3. Exception from the widened scope of increased burden under proviso to Section 68. Considering the regulatory and governance oversight, the risk of indefinite deferral of taxation of Dividends in case of listed companies and its subsidiaries is not real. Accordingly, there is an urgent need to provide a special regime in respect of taxation of inter-corporate dividends in cases of companies in which public are substantially interested particularly for listed companies and its subsidiaries. The amendment of the Act be considered in order to include a special dispensation in respect of inter-corporate dividends received by a listed company and its subsidiaries from domestic companies and InVITs which are part of the same group.	
13.	***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** Needs to provide exemptions to Life Insurance Policy. **Issue II** Surrender value on assignment of Key Insurance Policy (KIP) to employee is taxed under section 17(3)(ii) of the Act and again the entire amount received	***(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.*** ***(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.***

Sr. No	Section	Issue/Justification	Suggestion
		under such assigned policy is taxed on maturity.	***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
14.	***Section 10(11) & 10(12) – Request to reconsider and/or raise the limit of Rs 2,50,000/5,00,000 of taxability of Interest on various funds where income is exempt***	The Finance Act 2021 amended section 10(11) and 10(12) of the Act so that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of contribution made by the person exceeding Rs. 2,50,000/5,00,000 in a previous year in that fund, on or after 01.04.2021, computed in such manner as may be prescribed. Currently, section 10(11) provides for exemption with respect to any payment from a provident fund to which the Provident Funds Act, 1925 applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette. Similarly, Clause (12) of this section provides for exemption with respect to the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule. **Issue** The contribution limit of Rs. 2.5/5 lakh appears to be on lower side. In most of the cases, interest on employee contributions within 12% of basic salary will become taxable. The limit may be reconsidered and may be hiked appropriately say at least 12% of basic salary or Rs.5 Lakh whichever is higher to protect retirement corpus of genuine middle-class taxpayers to cater in absence of any social security scheme in place. The current law to levy Income tax on so much of the interest as is attributable to the amount deposited in excess of Rs. 2.5/5 lakh during any of the previous year appears to be harsh on those who plan their retirement themselves by putting in	***It is suggested that limit of Rs 2,50,000 in section 10(11) and section 10(12) of the Act may be reconsidered and may be raised suitably.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		their savings into PF. It seems that the legislative intent is to prevent the exemption being enjoyed by those ultra-rich who are able to deposit Rs 1 crore per month in PF, however, the limit of Rs 2.5/5 lacs may affect honest middle class salaried assessees and especially salaried class who may be safely depositing a major chunk of their savings every year to secure their retirement. The Government may reconsider this amendment. It is well known and duly acknowledged by the Government that honest middle class salaried assessees are depositing their hard-earned money into PF in order to accumulate a retirement corpus. Government may consider fixing higher limit that enables a middle-class salaried person to build its retirement corpus and also restrict people from taking undue advantage of EEE scheme. The limit may be raised to at least Rs 7,50,000 in line with the overall exemption limit in respect to employer's contribution to PF and other funds. As an alternative, the PPF contribution limit of Rs.1.50 lacs per person, may be increased, so that benefit is available to all sections of society; the Government would also have a good long term source of funds. Considering inflation and need for social security for people when they are aged, the limit may be increased further as deemed suitable. This limit of Rs.1.50 lacs was set in 2014 (it was increased from Rs. 1lac to Rs.1.50 lacs in 2014 – section 80C) and considering inflation and need for social security for people when they are aged, the limit may be increased further.	
15.	***Section 10(12A) – Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers under section 10(12A) – Similar amendment***	Section 10(12A) provides for an exemption of upto 60% of the total amount payable to an employee contributing to the NPS on closure of his account or on his opting out the scheme. Further, in cases of partial withdrawal from NPS, section 10(12B) provides for exemption of upto 25% of contributions made by an employee. These exemptions were,	***It is suggested that the amendment as made in section 10(12A) may also be made in section 10(12B) thereby extending the benefit of exemption in case of partial withdrawal to non-employee subscribers as well. The said amendment would also be in line with the intention of the legislature***

Sr. No	Section	Issue/Justification	Suggestion
	may also be made in section 10(12B)	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, till now, the Act 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.	***to provide a level playing field to both types of subscribers to NPS.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
16.	***Section 10(13) - Payment from approved superannuation fund***	Section 10(10AA) provides for exemption for payment received as cash equivalent of leave salary in respect of earned leave period at the time of retirement whether superannuation or otherwise. Section 10(13) provides for exemption with regard to payment from an approved superannuation fund. Section 10(13)(ii) of the Act provides for exemption in the hands of the employee in respect of the amount received on commutation of the annuity in case of retirement at or after a specified age or becoming incapacitated prior to such retirement. This provision however, does not cover commutation of an annuity paid on voluntary retirement of the employee. Section 10(10AA), as mentioned above, has taken care of such case by using the terminology "or otherwise". Since the intention of the law makers is clear by the wordings of section 10(10AA), section 10(13)(ii) may be appropriately amended to include the words "or otherwise". This will provide relief to genuine taxpayers who are taking voluntary retirement.	***Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of voluntary retirement, by including the words "or otherwise" in line with section 10(10AA) of the Income-tax Act, 1961.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
17.	***Section 10 –***	More often than not, the contractors take	***It is suggested that a special***

Sr. No	Section	Issue/Justification	Suggestion
	Special exempt allowance to employees engaged in infra industry	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.	***exempt allowance u/s 10 may be introduced for employees of Infrastructure 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.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
18.	***Section 10(23C) - Annual Receipts***	Under section 10(23C)(iiiad) and (iiiae) of Income-tax Act, it is provided that the income of University/Educational institutions/hospitals/ other institutions specified therein will be exempt provided they comply with the conditions stipulated therein. Also, it is provided that "aggregate annual receipts" of such institutions shall not exceed the amount of annual receipts as may be prescribed. Annual receipts have been prescribed as Rs. 1 crore vide Rule 2BC of Income-tax Rules. However, the word "annual receipts" have not been defined in the Income-tax Act. It is not clear as to whether: (a) For computing "annual receipts" only the receipts of such institutions from educational/hospital activities alone are to be considered each year; (b) Certain receipts of such institutions that are not received on annual basis e.g. receipts from sale of property, equity shares and other proceeds on divestment are to be excluded from the computation of "annual receipts"; (c) In certain cases where such charitable institutions receive donations in kind in the form of land, movable assets etc. whether "annual receipts" would exclude such receipts since they are not received annually.	***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.*** ***Also, it is suggested to include a clear provision so as to calculate Receipts institution wise as well.*** ***Further, it may be specifically provided that donations received towards corpus by way of land, movable assets are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
19.	***Section 10(23C) and Section 11 - Benefit of both the provisions be available to the assessees***	Section 10 (23C) and section 11 to 13 specify provisions for claiming exemption from income subject to satisfaction of conditions laid therein. Section 10(23C) of the Act provides for exemption of income received by any person on behalf of	***In view of the aforesaid, it is suggested that suitable amendments may be carried out in the provisions of section 10(23C) and section 11 so that assessees may be able to avail exemption***

Sr. No	Section	Issue/Justification	Suggestion
	concerned simultaneously	different funds or institutions etc. specified in different subclauses. In other words, exemption to funds, institutions, trusts etc. carrying out religious or charitable activities is provided under section 10(23C) of the Act and sections 11 and 12 of the Act. Section 12A of the Act, inter alia, provides for procedure to make application for the registration of the trust or institution to claim exemption under section 11 and 12. Section 12AB is the new section which comes into effect from 01.04.2021. As per current provisions, benefit of both Section 11 and section 10(23C) are not simultaneously available for the same assessee. There appears to be no reasonable and sound logic for the same, as in any case cause of charity is pursued. Further, if the Government fails to pay grant, registered Charitable Trusts assessees are not able to claim requisite exemptions and deductions under section 10(23C). This would be due to the fact that deduction would be below the specified limit of 50% of the Government support and at the same time, no exemption can be claimed under section 11 of the Act as the said assessee may not be registered under section 12A/12AB of the Act. The matter needs consideration as the concerned assessees lose the benefit envisaged for carrying out charitable/non-profit activities.	***under both the sections/regimes and claim requisite exemptions. Suitable checks and balances may also be placed so that double deduction/exemptions may not be claimed under both the provisions.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
20.	***Section 10(23C)/11 - Benefit of carry forward of Excess Application of Income in case of Charitable Trust***	The Finance Act 2021 amended section 10(23C) and section 11 of the Act so as to, inter alia, restrict the benefit of carry forward of excess application of the trust assessee for set off against income of subsequent years. **Issue I** Charitable trusts are making a significant contribution in helping in building a better world. Their contribution assumes further significance in upliftment of poor, medical relief etc. during the tough times of Covid pandemic, Earthquake, Floods, etc. However, the restrictions vide the Finance	***It is suggested that:*** ***(a) suitable legislative amendments be carried out in section 10(23C) and section 11 so that the benefit of the carry forward may kindly be allowed to the trust in aforesaid cases.*** ***(b) amendment in clause (iiiad)/(iiiae) of section 10(23C) may be made per institution/person/assessee and not in aggregate. A suitable clarification in this***

Sr. No	Section	Issue/Justification	Suggestion
		Act 2021 may act as a deterrent to such trusts. Excess application may be required in circumstances such as Covid19 pandemic, when Charitable Trusts join hands with the Government and contribute substantially to relief activities. To deny carry forward of such excess application may deter the Charitable Trusts to go the extra mile in supporting the Government in the hour of need. Accordingly, the said provisions need reconsideration. It may be noted that the Companies Act, 2013 was recently amended allowing companies to carry forward the excess CSR spend in a year to set off in future 3 years. The said amendment in Income-tax Act, 1961 may not be in sync with the intent of the Government communicated and expressed in the Companies Act as aforesaid. **Issue II** The Finance Act 2021 has raised prescribed limit for exemption by amending section 10(23C) (iiiad)/(iiiae) of the Act. The insertion of new clause(s) has in fact reduced the exemption by stating to aggregate the same for all the institutions together of a person/assessee. The limit of Rs. 1 crore was prescribed in the year 1998, i.e. 23 years back. Since then, the situation has undergone a sea change including devaluation and inflation. Further, Government's expenditure on educational sector is not enough to facilitate the infrastructure to educational sector. It has remained less than 3% of GDP. Due to this limitation, the Government has as a policy matter decided to open it to private sector. The limitation of expenditure on educational sector still continues. Hence, the private trusts running educational institutions has to be continue with enhanced limits in view of inflation and devaluation. The limit has to be increased but not in aggregate for the person/assessee. It has to be per institution, university or hospital etc. If one only checks the limit with the	***regard may be issued.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		inflation ratio, the same must be at least tripled to Rs.3 crores per institution. But, the amendment has in fact reduced it to Rs.5 crores in aggregate for all the institutions, universities or hospitals taken together for the person. It appears that the amendment is made without taking into account aforesaid factors and hence needs to be suitably modified. The only change that may be required was to change the limit of Rs.1 crore to Rs.5 crore keeping everything else as it is. In fact, a clarification to allow the same per institution is required to be inserted to avoid any confusion and reduce the ongoing litigation at many places. If at all the aggregation is to be considered, then the same should be at least Rs. 100 crores, as the gross receipts are considered. The fee and expense structures have undergone a sea change since the limit was first announced in 1998. There are trusts which are running only primary and secondary schools at multiple places without any Government aid and at places where Government cannot reach. These will be devastatingly hampered, if the limits are not increased.	
21.	***Section 10(23FB) - Tax exemption for Alternative Investment Funds – Venture Capital Funds***	Earlier under Section 10(23FB) of Income-tax Act, any income of a Venture Capital Company (VCC) or Venture Capital Fund (VCF) set up to raise funds for investment was exempt from taxation. However, in 2007, this was amended and the scope of VCC / VCF was narrowed down to select sectors and the exemption from income tax was limited to "any income of a VC company or VC fund from investment in a venture capital undertaking". The sectoral restriction stands removed in Union Budget, 2012 which was a welcome move. However, the tax exemption still remains limited to "any income of a VC company or VC fund from investment in a venture capital undertaking". Keeping in mind the growing importance of VC funds in infrastructure and also in other	***It is suggested that section 10(23FB) be reworded as follows:*** ***"Any income of a venture capital company or venture capital fund from investment <u>set up to raise funds for investment</u> in a venture capital undertaking."*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
22.	***Section 10(32) - Income of minors - to increase exemption limits***	At present income of minors included in the hands of parents is exempt to the extent of Rs.1,500/- for each minor. The average expenditure to meet cost of a minor's education/health/living expenses which has gone up considerably in recent years, limit of Rs.1,500/- fixed is woefully inadequate.	***It is suggested that this should be raised to at least Rs. 10,000/- for each minor child.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
23.	***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.	***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).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
24.	***Section 11 -Income from property held for charitable and religious purposes***	The charitable organization have been given exemption, under the Act, from taxation in respect of income arising to them subject to certain conditions. The primary basis of providing exemption is that the income is applied towards intended activity which benefits society at large. The primary sources of funds for charitable organization are either through Voluntary contributions/ donations received from various donors and	***It is suggested that the amendment in section 11 of the Act may be considered to expand the permitted mode of investment for charitable and religious trusts so as to include investment in units and debt instruments issued by an Infrastructure Investment Trust (InvIT) registered under Securities and Exchange Board of India (Infrastructure Investment***

Sr. No	Section	Issue/Justification	Suggestion
		philanthropists or through the income derived from the property held under trust. Therefore, a stable and sustainable source of income from the investments and funds of charitable organisations is essential for them to continue to undertake their objectives. One of the core conditions to be fulfilled by the charitable organisations for continued tax exemption is that any accumulation of income, investment and deposit of orgainisations funds and the corpus donation has to be kept in the specified modes. The permitted modes are provided under Section 11(5) of the Act. The said section also had enabled additional modes to be prescribed by way of Rules. Rule 17C of the Income-tax Rules, 1962 (the "Rules") provides for additional permitted modes of investment. The legislature and the Government have both been responsive to the need of charitable organisations having sustainable source of revenue and at the same time investments being channelized effectively and in focused manner for ripple effect in the economy. This is evidenced by inclusion of various new modes of investment being permitted both under Section 11(5) and Rule 17C over period of time. However, keeping in view the objective of charitable organisations, the permitted investments have been in the well regulated space. One of the key and continuing focus area of the Government has been development of infrastructure in the country. The Covid19 pandemic has again highlighted the need for funds for infrastructure development, particularly in health care sector. This had also been reflected in the permitted mode added over period of time. The following investments related to infrastructure are already prescribed: *0 Investments in debt instruments issued by infrastructure finance company.* *1 Deposits with or investment in any bonds issued by a financial*	***Trusts) Regulations, 2014 and debt instruments issued by an SPV as defined in the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 as one of the forms and modes of investment for the purposes of section 11(5) of the Act. A draft of suggested amendment in section 11(5) is placed below:*** ***"(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :—*** ***(i)--------*** ***----------*** ***(ixb) Investment in,*** ***(a) units and debt instruments issued by a Infrastructure Investment Trust (InvIT) registered under Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014; and*** ***(b) debt instruments issued by an SPV as defined in the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014;"*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		corporation which is engaged in providing long-term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of section 36; 2 *Deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;* 3 *Deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.* The instruments apparently are such which provide a regular income to the charitable organisation and they have been issued by well regulated entities which ensures risk mitigation and proper price discovery The SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) were promulgated in September 2014 to provide impetus to the sector. The InvIT Regulations provide the framework within which infrastructure investment trusts (InvITs) raise funds from investors and deploy funds in infrastructure projects. The primary objective behind InvITs is to facilitate the mode for channelising of private capital into the infrastructure sector. Further, it will also reduce the pressure on the banking system by making available fresh equity and attracting long term finance from foreign and domestic sources including the NRIs. The units issued by Invits also provide a mixed opportunity for the investor to get the assured periodic revenue stream and also participate in the gains on transfer of underlying	

Sr. No	Section	Issue/Justification	Suggestion
		infrastructure projects. Earlier these were new instruments, however, over period of six years, adequate maturity has been achieved by this Collective investment vehicle which is similar to the Mutual Funds. The SEBI being primary regulator assures a keen regulatory oversight on the various aspects of Invits. With the evolving financial ecosystem and InvITs having gained sufficient maturity, the prescribed mode of investment by the charitable organisations needs to be amended so as to permit investment in Units and debt instruments issued by an Infrastructure Investment Trust (InvIT) registered under Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014. The above modification in the prescribed modes of investment shall facilitate flow of funds for infrastructure development, facilitate long term capital requirement of the infrastructure projects and ease the burden on the banking sector while at the same time providing the charitable organisations an efficient and well regulated instrument for ensuring long term sustainable flow of income. The inclusion of units and debt instruments of an InvIT as a permitted mode would be in complete consonance with the policy objective of the Government as the investments in units of Mutual Funds (which is a similar collective investment vehicle) is already permitted and so also in the various debt instruments of infrastructure finance related entities, as indicated above. The units and debt instruments of InvIT's (a well regulated collective investment vehicle with infrastructure as the focus) blend the two objectives and may be considered for inclusion in permitted mode of investment.	
25.	***Section 11 - Restructuring of provisions regarding charitable***	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.	***In order to avoid the litigation and also to create a situation that institution really works as a charitable institution, it is suggested that:-***

Sr. No	Section	Issue/Justification	Suggestion
	institutions	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. Inspite 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.	***(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, 2020/2021 may not be necessary and needs reconsideration.*** ***(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***

Sr. No	Section	Issue/Justification	Suggestion
			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 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)***
26.	***Section 12 - Income of trusts or institutions from contribution***	Section 12(1) provides that 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, at times such a voluntary contribution is received otherwise than sum of money i.e in kind in form of jewellery, silver utensil etc. In absence of any clarity, it may happen that such contributions are not being reflected by some of the organisations and thereby escape the condition of application for charitable and religious purpose requirement. The section is also not clear as to the value at which such contribution in kind are to be recorded for application of condition of accumulation and	***It is suggested that section 12 of the Act may be amended so as to clarify that voluntary contribution shall include any such contribution in kind and the value of the property so received by the trust or institution shall be the Fair market value as on date of receipt of such contribution.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		application etc. In order to prevent this revenue leakage and ambiguity, the provisions need to be amended to clarify that voluntary contribution in kind re to be recorded and that the said contribution has to be recorded at the Fair market value of the property so contributed. The FMV may be then prescribed or linked with FMV rules already in place.	
27.	***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, jewellary etc.) without specific direction to form part of the corpus is not recorded in books of accounts by some charitable and religious trusts. Some charitable and religious trusts receive voluntary contributions in the form of gold, silver, jewellary, 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.	***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.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
28.	***Section 12A/12AB – Status of registration application***	If the order for granting or refusal of application for registration of trust or institution u/s. 12A is not passed within 6 months, status of registration cannot be defined. Some judgments pronounced that it will be considered as deemed registration, while some judgments are against this view. To minimize litigation, certain amendment needs to be made in existing provisions.	***It is suggested to insert a proviso to section 12A/12AB such that non-disposal of application for registration u/s 12A within prescribed period will be considered as deemed registration.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
29.	***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 aforesaid 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. Human intervention involves discretion and such discretionary powers are at best be avoided in line with faceless regime being followed by the Government.	***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.*** ***(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
30.	***Deduction to salaried assessees - Payment for notice period***	As per the prevalent norm, the employees are required to serve notice within the stipulated time before leaving the organisation. The notice period, however, varies from organisation to organisation. For example, in an organisation the notice period may be 90 days, or an employee has to pay 90 days salary amount to the organisation as an employee may get a better job opportunity in another organisation wherein he is required to join within 30 days. Accordingly, the employee has to give 30 days' notice in old organisation and pay for short notice of 60 days. Generally, the contract of service also provides that in case the employer is not satisfied with the performance of the employee, he may terminate his services by giving a notice of 30 days or 30 days salary. In case the employer suspends the employee with immediate effect he pays an amount equivalent to 30 days salary and claims deduction thereof. Such amount becomes taxable in the hands of the employee. However, in case the employee is required to pay notice period salary, no deduction of such amount paid is allowed to him. If the new employer agrees to bear the brunt of notice period pay, say of 60 days in above example, the said amount will be included in the total income of the employee and tax will be deducted thereon even if such income belonged to the ex-employer and is taxable in his hands. Thus, in effect the assessee will be liable to pay tax on 14 months' salary i.e. salary for more than 12 months without any deduction available to him.	***It is suggested that aforesaid anomaly may be resolved and appropriate provisions be inserted so that income from notice period pay is chargeable in the hands of ex-employer and deduction of the amount of 'notice period pay' paid be made available to the employee as he has not effectively received that income (unless reimbursed by the new employer).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
31.	***Section 16 – Regular enhancement of standard deduction***	Salaried employees are currently allowed standard deduction u/s 16 @ Rs 50,000 or the amount of salary	***It is suggested that the standard deduction u/s 16 may be enhanced to at least Rs. 100,000***

Sr. No	Section	Issue/Justification	Suggestion
	basis cost inflation index	whichever is less. This is to cover many expenses incurred during the course of the employment other than professional tax on employment. There are various expenses that the employees incur during the course of employment which they cannot claim as deduction. At the same time, the few exemptions that are available to them u/s 10 are subject to upper limits which have been fixed several years back and virtually serve no purpose on account of inflation. Employees during the course of their employment incur various expenses, including for upgrading skill, for rendering their services as employees, deduction for such expenses needs to be enhanced every year. Ideally, standard deduction may be revised every year basis cost inflation index i.e. standard deduction amount to be revised and indexed annually. For avoiding leakage of revenue, such deduction may be linked to cost inflation index just like as it happens for income under the head capital gains and maximum may be restricted upto say Rs. 1,00,000/-.	***to ease the tax burden of the employees and keeping in mind the rate of inflation and purchasing power of the salaried individual and rather it be linked to cost inflation index for regular enhancement in deduction amount similar to available for income under the head capital gains.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
32.	***Section 16 – Expenses incurred due to COVID19/lockdown/Work from home***	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 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/may be taxed as perquisite in the hands of the employees although part of office set up costs and incurred for carrying out employment work. This issue may be avoided by issuing suitable clarification.	***It is suggested that expenses incurred towards furniture / other set-up cost may be specifically exempted by suitably amending section 16 of the Income-tax Act, 1961.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
33.	***Section 23 - Deduction of interest from house property***	As per section 23, pre EMI interest is allowed for deduction in five equal instalments 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.	***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.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
34.	***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.	***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.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
35.	***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 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.	***It is suggested:*** ***(a) to amend section 71(3A) so as to exclude provisions of section 23(5).*** ***(b) that Real Estate business entities be exempted from the provisions of section 23(5) and 71(3A) for atleast five years.*** ***(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.*** ***(d) that provisions of section 72A***

Sr. No	Section	Issue/Justification	Suggestion
		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.	***allowing set off of unabsorbed losses and unabsorbed depreciation be allowed to real estate sector also to enable consolidations and mergers.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART D–PROFIT AND GAINS OF BUSINESS AND PROFESSION

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
36.	***Section 28(iiia) – Sale of license***	Section 28 provides for income that is chargeable to income tax under the head "profit and gains from business or profession". As per sub-section (iiia) of section 28, profit on sale of license granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 is chargeable to tax under the head "profit and gains from business or profession". It is pertinent to mention that "The Import and Exports Control Act, 1947" as mentioned in section 28(iiia) has been repealed. Further, advance Authorization issued in place of erstwhile advance licenses are not transferable as per the Foreign Trade Policy issued under Foreign Trade (Development and Regulation) Act, 1992.	***Since the Import and exports Control Act, 1947 has been repealed and advance Authorization issued in place of erstwhile advance licenses are not transferable as per the Foreign Trade Policy issued under Foreign Trade (Development and Regulation) Act, 1992, is suggested that sub-section (iiia) to section 28 be omitted.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
37.	***Section 28(iiid) – Duty Entitlement Pass Book Scheme no more in existence***	Section 28(iiid) provides that any profit on transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall be chargeable to income-tax under the head "Profits and gains of business or profession". However, the aforementioned DEPB scheme was abolished w.e.f 1.10.2011	***It is suggested that sub section (iiid) to section 28 be omitted since the Duty Entitlement Pass Book Scheme was abolished w.e.f. 1.10.2011 vide Notification No. 51/2011 – Customs, dated 22.06.2011.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***

Sr. No	Section	Issue/Justification	Suggestion
		vide Notification No. 51/2011 – Customs, dated 22.06.2011.	
38.	***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 judgements by different high courts regarding the taxability of non-compete fees in the hands of payer. Both Gujarat High Court (CIT v Ferromatice Milacron India P. Ltd, [2018] 99 taxmann.com 154 (Guj.)) and Bombay High Court (PCIT v Piramal Glass Limited, ITA No. 556 of 2017) had held that non-compete fees are eligible for depreciation thereby treating the payment of such fees as capital asset (an intangible asset). However, Madras High Court (Asianet Communications Ltd, TS-429-HC-2018(MAD)) has held that non-compete fee paid to a director is a deductible revenue expenditure.	***Considering the differing judgements by various courts on the issue of payment of non-compete fees, it is suggested that suitable legislative amendment be made clarifying the treatment of such expenditure in the hands of payer.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
39.	***Section 28(via) - Conversion of Stock-in-trade into Capital Asset***	Vide the Finance Act, 2018, as per section 28 of the Act when any stock-in-trade is converted into capital asset, the same will be subject to tax in the following manner i) Business Income: Fair Market value on the date of conversion determined in the prescribed manner less cost of inventory converted into capital asset. ii) Capital Gain: Sale Consideration less Fair Market Value on the date of conversion as determined in the prescribed manner. However, it is silent on when the tax is to be discharged, whether on conversion or on sale of capital asset. Therefore, the difference would be taxable in the Previous Year in which the stock in trade is converted into a capital asset.	***It is suggested to provide deferment of payment of tax on business income from conversion of stock-in-trade to capital asset till the final disposal of such capital asset to avoid hardship of payment of tax on unrealized gain and bring parity with the method adopted on conversion of capital asset into stock-in-trade.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
40.	***Section 32 – Depreciation on***	The Finance Act 2021 vide amendment to section 32 has provided that goodwill	***It is suggested that the amendments in section 32(1)(ii)***

Sr. No	Section	Issue/Justification	Suggestion
	Goodwill and its adverse impacts on banks and other similar assessees	of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. Accordingly, section 32(1)(ii) of the Act is amended to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said clause and therefore not eligible for depreciation. Further, Explanation 3 to sub-section (1) of the said section provide that goodwill of a business or profession shall not be considered as an asset for the said sub-section. Consequential amendments have been made in section 2(11), 50 and 55 of the Act. **Issue** Currently, as per section 32(1)(ii), depreciation was allowed on various intangible assets including "any other business or commercial rights of similar nature". Other intangible assets being copyrights, trademarks etc. Supreme Court in the case of Smiff Securities Ltd. [2012] 348 ITR 302 (SC) held that goodwill was a depreciable asset under section 32 and depreciation needs to be allowed on the same under section 32(1)(ii) of the Act. Based on the above Supreme Court judgment, many benches of Income Tax Appellate Tribunal as also some High Courts held that whenever any excess amount is paid for acquiring the business of any other concern (in takeovers/mergers), the excess is nothing but the goodwill and hence, depreciation had to be allowed. The Finance Act, 2021 excluded goodwill from section 32(1)(ii) w.e.f. Financial Year 2020-21 pertaining to Assessment Year 2021-22. As such, depreciation will not be allowed on goodwill from Assessment Year 2021-22 & onwards. In this regard, the Memorandum explaining provisions in the Finance Bill, 2021 refers to Supreme Court judgment	***may be reconsidered and goodwill (at least purchased) may be reinstated eligible for depreciation. In this regard, it may be worth considering the fact that incentive to buy sick industries/banks may be taken away.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		in Smiff Securities Ltd. (supra). It also states that goodwill, in general, is not a depreciable asset and in fact depending upon how the business runs, goodwill may see appreciation or in the alternative no deprecation to its value. Hence, there appears to be little justification for depreciation on goodwill. However, conflicting views are also there. If depreciation is being allowed on these assets, there may not be any feasible justification for not considering goodwill for the purpose of depreciation. We wish to inform that there are various assessees (like banks etc) as also industries who have taken over sick banks / industries and have saved the money of depositors as also the employment of the employees and their money. One of the incentives for taking over sick banks / industries is the allowance for depreciation on goodwill which is invariably paid while taking over sick banks/ industries. This incentive goes a long way in determining the price to be paid for the sick banks/ industries. In the above scenario, considering the fact that the said amendment as carried out, sound banks/ industries may become reluctant to take over sick banks/ industries as the incentive in the form of depreciation allowance will no longer be there and this may prove fatal for the sick banks, their employees as also sick industries.	
41.	***Section 32 - Depreciation in case of slump sale***	The proviso to section 32 provides that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in clause (xiii),(xiiib) and clause (xiv) of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of	***Section 32 may be amended to clarify the legal position as to whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale also, considering the proviso to section 32 read with section 170 of the Act.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		amalgamation, or to the de-merged company and the resulting company in the case of de-merger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the de-merger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets *were used by them*. The following issues may be considered for appropriate amendment in the law : (a) An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to section 32 read with section 170 of the Act. (b) As per the current provisions of proviso to section 32, the depreciation can be claimed on the basis of proportionate number of days for which the assets were used by the predecessor and the successor, or the amalgamating company and the amalgamated company, or the de-merged company and the resulting company, as the case may be. Due to practical and administrative difficulties, there may be a time gap 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.	
42.	***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	***It is suggested that the benefit of section 35AD(8) should be extended to telecommunication***

Sr. No	Section	Issue/Justification	Suggestion
		done since profit based incentives were distorting the tax base. Accelerated deductions @ 150% were earlier 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.	***and allied service companies.*** ***In addition to new entities incurring capital expenditure, even existing entities incurring capital expenditure for substantial expansion of their essential core should also be allowed the accelerated deductions as substantial capital infusion is required periodically to sustain their viability.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
43.	***Section 35D - Amount paid for increase in authorized capital***	Currently, amount paid for increase in authorized capital is not allowed as 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.	***It is suggested that fee paid to Registrar of 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)***
44.	***Section 36(1)(va)/43B - Disallowance towards PF/ESIC in respect of Employee***	The Finance Act. 2021 amended section 36(1)(va) of the Act by inserting another Explanation to the said clause to clarify that the provision of section 43B does	***It is suggested that the deduction be allowed if the same (employee share of contribution) is paid before the date of filing***

Sr. No	Section	Issue/Justification	Suggestion
	contribution paid after the due date under the Respective Act	not apply and deemed to never have been applied for the purposes of determining the due date under this clause. Further, section 43B is also amended so as to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of section 2(24)(x) applies. **Issue** We wish to inform that various High courts have held that PF/ESIC contribution in respect of employee share is eligible for deduction if the same is paid before the due date of filing income tax return as against due date under the respective Act. It may humbly be noted that businesses have numerous compliances to be done and often engrossed with temporary liquidity issue. As a result, business houses find it difficult to make the payment of employee share within due date on certain occasion under the respective Act. The payment is often coupled with the fact that salary also in such cases is paid belatedly. Employees also co-operate with their employer in such situations. Out rightly, disallowing the amount of employee share towards PF/ESIC if not paid within the date under the respective Act is sure to enhance the financial burden of the taxpayers. In the interest of all, the said amendments needs to be reconsidered. The payment of employee's contributions to PF/ESI and similar funds have been deemed to be disallowed. Various courts have held these to be treated on par with the Employers contributions and these decisions are to be negated now. The reasoning given by the Government is that the employee would be at a loss in terms of interest if the employer delays payment and may even lose their contribution if the employer shuts down	***of income tax return as against due date under the Respective Act. Alternatively, the due date under the respective Act may be enhanced from middle of the month to the end of the month. Further, it may also be suggested that disallowance under under Income-tax Act, 1961 (Section 36(1)(va) may be reconsidered in view of the fact that penal provisions are already there in the respective PF/ESI laws. Also, in case found reasonable, disallowance may be made proportionately/graded basis the delay in number of days (period) i.e. full disallowance may not be made for delay of a day.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		the business without paying the employee contributions. Both these may not hold good. The employer is liable to interest and penalties under the respective Acts if they delay payment. The employees interest credit is from the month in which the month in which the payment is due by the employer and not from the month in which the payment is actually made. If the employer does not pay the dues and shuts down business, no deduction under the Act would anyway be granted since the amounts are disallowed u/s 43B of the Act. The employers are anyway penalized under the respective Acts including by way of criminal proceedings and hence it is patently unjust to deny him a deduction when he has actually paid the dues though delayed. Hence, these provisions may be restored and treated on par with the Employer contributions and be allowed if paid within the due date of filing return or allowed in the year of payment if paid subsequently. 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.	
45.	***Section 37 – Corporate Social Responsibility expenditure***	The Finance (No. 2) Act, 2014 added 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	***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 expenditure.*** ***In fact, ideally there should be no bar on allowability of CSR expenditure under the Act.*** ***(SUGGESTION FOR RATIONALIZATION OF THE***

Sr. No	Section	Issue/Justification	Suggestion
		covered u/s. 30 to 36 of the Act.	***PROVISIONS OF DIRECT TAX LAWS)***
46.	***Section 37 - Deduction for ESOP expenditure***	Under Section 17(2)(vi), the shares allotted by the employer under Employee Stock Option Plan (ESOP) are taxable in the hands of the employees as perquisite under the head salary. ESOP is one of the modes of compensating the employees for their services with the intention to retain the dedicated employees to generate more revenues for the entity and thus it qualifies for deduction u/s 37(1) of the Act. The assessee had an obligation to issue shares at discounted rate on future dates, even if it was not paying anything to its employees. The ESOP granted by the assessee to its employees was for the purpose of development of its business for earning higher profits. However, in absence of any specific provision in the Act, the deductibility of ESOP expense in the hands of the employer assessee remains the bone of contention between the assessee and the tax department. The employer assessee claims it as tax deductible business expense stating that it should be allowable to the employer as salary expense whereas the tax department raises an objection claiming it to be (i) a contingent liability and (ii) being capital account expenditure. The judicial authorities have been consistently allowing the expenditure. It is therefore, necessary that a specific provision may be inserted in the Act to provide for the manner of deductibility of the expenditure in the hands of the assessee on account of ESOP expenses. This would remove the uncertainty and benefit both the tax department as well as taxpayers like provisions of section 17(2)(vi) provided certainty in taxation of ESOPs in the hands of employees.	***It is suggested that suitable amendment may be made in the Act to provide for the manner of deduction of ESOP expenses to the assessee being issuer of the ESOPs.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
47.	***Section 40(ba) – Amendment w.r.t.***	Currently, substantial number of real estate transactions are structured as	***It is suggested to amend section 40(ba) to allow remuneration,***

Sr. No	Section	Issue/Justification	Suggestion
	taxation of consortiums/JVs/ AOPs	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.	***interest to JV partners subject to provisions of section 40A(2) so as to protect revenue's interest.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
48.	***Section 40(b)(iv)/(v) – Raise in allowable expenses in the form of interest on capital and 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. Further, current provisions u/s 40(b)(iv) disallow interest paid on partners' capital as per partnership deed in excess of 12% simple interest per annum. There is a need to reconsider this 12% rate of interest in current times. The bank rates have risen and accordingly, need to revise this 12% rate accordingly.	***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. Further, it is suggested that section 40(b)(iv) may be amended so as to raise the allowable rate of interest @ 12% p.a. keeping in mind the increase in bank rates.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
49.	***Explanation 5 to Section 43(1) – "building" to be replaced by "assets"***	Section 43(1) deals with provisions pertaining to determination of actual cost. There are many Explanations provided in section 43(1) describing the method of computation of actual cost of asset under different situations. Explanation (5) deals with actual cost in respect of building previously used by the assessee for certain purposes & subsequently brought into business or profession. According to this explanation, the building so brought in should be notionally depreciated & the resultant WDV as at the date of introducing the building into business	***In line with the other Explanations to section 43(1), it is suggested that the term "Assets" be used instead of the term "building" in Explanation 5 to section 43(1).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
50.	***Section 43B - Clarification regarding deduction on payment of interest only on actual payment – Need to provide carveout for conversion in genuine cases like conversions under IBC, 2016***	The Finance Act 2022 amended Explanations 3C, 3CA and 3D of section 43B of the Act to provide that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank shall not be allowed even in cases where such interest is converted to a debenture or any other instrument by which liability to pay is deferred to a future date. **Issue** The aforesaid amendment needs a relook especially in certain cases, it may cause inadvertent hardships to certain assessees. The amendment covers even the bona fide transactions within its ambit. This amendment is impacting debt ridden companies that enter into arrangement with financial institutions for recast of loan or outstanding interest into convertible, non-convertible instruments, equity, etc. as part of restructuring plans, despite being consented by the Banks or Financial Institutions. It may result in the situation where the deduction for interest on original loan converted into debenture (which then partakes the character of principal loan amount in the form of debenture) may never get allowed in perpetuity.	***It is suggested that the amendment in section 43B pertaining to Explanations 3C, 3CA and 3D be reconsidered and further, there is a need to provide for a suitable carveout for conversion effected under the Corporate Insolvency Resolution Process ['CIRP'] under the Insolvency and Bankruptcy Code (IBC), 2016.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
51.	***Section 43CA - Increase the safe harbour threshold subject to specified conditions – Request to further relax the conditions***	The Finance Act. 2021 amended section 43CA of the Act so as to increase the safe harbour threshold from existing 10% to 20% subject to fulfilment of following conditions: (a) The transfer of residential unit takes place during the period from 12.11.2020 to 30.06.2021,	***It is suggested that the benefit of the aforesaid provisions be extended to 31.03.2022 instead of 30.06.2021. Further, it is also suggested that the benefit be extended to all the categories of the taxpayers and accordingly conditions may be further***

Sr. No	Section	Issue/Justification	Suggestion
		(b) The transfer is by way of first-time allotment of the residential unit to any person, and (c) The consideration received or accruing as a result of such transfer does not exceed Rs 2 crore. **Issue** The stated reason for the increase in threshold is to boost the demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a lower rate to home buyers. At present, the stamp duty valuation of the property is relevant for computation of income if it is more than 110% of the actual sale consideration. Considering the present scenario of the real estate sector, the benefit of threshold of 110% is now extended to 120% if the property is sold by a real estate developer and it's a primary sale where consideration does not exceed Rs 2 crore. The said amendment is expected to boost the real estate sector as well as to provide some relief to home buyers leading to overall economic development. However, the benefit is restricted on sale done prior to 30.06.2021. Further, the benefit is available to only real estate developers & purchasing directly from real estate developers and the consideration does not exceed Rs 2 crores. The real estate sector is facing a big challenge of unsold inventory due to the pandemic/ overall economic conditions created from lock down not attributed to business issues and Banking sector is also facing huge NPAs in this sector. Therefore, keeping both the sectors in mind, the benefit of 20% safe harbour may be extended without any conditions.	***relaxed.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
52.	***Section 44AB – Increase in threshold limit from Rs 5 crore to Rs 10 crore subject to conditions specified for person carrying on business***	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 5 crore to Rs	***It is suggested that:*** ***(a) The threshold limit of Rs 10 crore be reduced keeping in mind the fact the current tax audit report format requires reporting of various disallowances and***

Sr. No	Section	Issue/Justification	Suggestion
	– Certain concerns/issues to be addressed	10 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 standpoint. The steep increase in the threshold for tax audit from Rs. 5 crore to Rs. 10 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 14.2 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 audit. Tax audit by chartered accountants have compelled assessees 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 in 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	***compliances as aforesaid stated. 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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)*** ***(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 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.*** ***(c) The anomaly in the manner of applicability of section 44AB to individuals/HUFs/Firms with turnover upto Rs 2 crores and turnover exceeding Rs 2 crores may be***

Sr. No	Section	Issue/Justification	Suggestion
		many more. Also, depreciation computation, computation of gains/losses on sale of investments, right classification of head of income, instances of export, treatment of exchange differences, provisions relating to new units (various exemptions), etc. to name a few more. Computation of taxable income using ICDS is also very complex. eg ICDS 9 is much more complex than provisions of Accounting Standards. Without tax audit, Income-tax Department may not have right income computed. Importantly, these assessees presently maintain books only because they are liable for tax audit. By raising the threshold for tax audit, these entities may get to indiscipline of no proper records. These entities have bank borrowings ranging from Rs.50 lacs to Rs.5 crore and on aggregate such borrowings are huge. Today banks rely on tax audited financial statements for credit review. Such move may expose banks to significant risk if tax audit is removed. 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. Also, assessees excluded from tax audit	***rectified.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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 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. In this regard, the Government may consider following ground realities and various other factors as mentioned below: 1. Auditors act as a watchdog on various compliances such as tax deduction, excess cash payment above Rs. 10000/-, Professional Tax deduction, GST Reconciliation etc. In most of the cases, the tax Auditor informs the assessees to comply with all provisions of law. 2. Digital economy cannot be done at the cost of revenue loss. Some Small and medium enterprises sometimes does to want to pay taxes because of fear of audit as they are complying with various laws. Certain situations where tracking may not be done digitally are as follows: a. Assessee may not be deducting tax, b. Assessee has purchased goods and now sold, money received in bank but sales invoice not raised. c. Assessee putting personal digital transaction expenses in profit & loss account. Difficult to distinguish	

Sr. No	Section	Issue/Justification	Suggestion
		between personal expenses and business expenses. Certain assessees may now go for filing of their Tax returns from Non-qualified professionals bringing down the quality of books of accounts and Government may not have any mechanism to trace it. However, Individuals/HUFs/Firms whose turnover exceeds Rs 2 crore and 95% of the receipts and payments are through prescribed electronic modes are exempted from tax audit even if their profit is less than 6%. Since the same is not covered under section 44AD, it may be noted that individuals/HUFs/Firms with turnover upto Rs 2 crores who are eligible to opt for section 44AD cannot declare profits lower than 8%/6% as the case may be without getting their books of accounts audited. It would amount to violation spelt out in section 44AD(4) of the Act. This anomaly also needs to be rectified.	
53.	***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. It further provides 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/Rs 10 Crore. Section 44AB(e) is applicable	***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).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
54.	***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.	***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 specified contractors and turnover ceiling may be increased to Rs. 5.00 crores for Infrastructure Industry.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
55.	***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 income (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.	***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
56.	***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 extended to all assessees, including an LLP. Only section 44AD excludes LLP, for which there appears to be no cogent reason. Otherwise under the Act, an LLP	***It is suggested that the benefit of section 44AD may also be made available to an LLP assessee.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***

Sr. No	Section	Issue/Justification	Suggestion
		and a Firm are treated at par.	
57.	***Section 44AE – Simplification of presumptive taxes on heavy goods vehicle***	Clause (i) of sub section (2) of section 44AE prescribes the presumptive rate of income equal to one thousand rupees per ton of gross vehicle weight (gvw) or unladen weight (ulw) as the case may be for every month or part of a month during which the heavy goods vehicle (hgv) is owned by the assessee. The aforesaid clause is having issues in its interpretation. This is creating unnecessary confusion because for every hgv, there is gvw and also ulw. So, it is not clear as how to calculate the presumptive income under this section. One interpretation may be that when an hgv is in use, for that period take gvw and when it is idle for that period take ulw for calculating income under this section. But such calculation will require proper records which goes against the very purpose of presumptive tax scheme. It may be mentioned that clause (ii)of this sub section provides rate of Rs 7500/- per month for non hgv. Considering this and heavy depreciation and finance charges, monthly presumptive rate of Rs 15000/- may be quite appropriate for hgv.	***It is suggested that instead of the current calculation prescribed under section 44AE(2)(i), a fixed monthly rate of Rs 15,000/- per month per hgv may be prescribed.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
58.	***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 inserted 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	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	***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***

Sr. No	Section	Issue/Justification	Suggestion
		profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession". The threshold limit of Rs 50 lakhs appears to be low. Consequently, this provision may not achieve the intended objective of providing relief to professionals in the small and medium segment. Even the Income Tax Simplification Committee headed by Justice R V Easwar recommended a threshold limit of Rs 1 crore. This appears to be a more justifiable limit considering the present economic conditions prevailing in the country.	***provision.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	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.	***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 taxpayers having income from profession.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART E – CAPITAL GAINS

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
59.	***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 assessees. This will encourage real estate joint developments. Section 45(5A) incorporates provisions of section 50C, but only partly with the result that relief provisions to assessees 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 *inter alia* 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). Another related matter is the time of reckoning for the purpose of provisions of section 54, section 54EC etc. i.e. start period of time limits as provided. Due to lack of funds, sometimes in case of joint development agreements, there is a need to provide clarity for the purpose of determining the date of completion of the property for the purpose of claiming exemptions from capital gains under the aforesaid sections.	***(a) It is suggested to extend scope of section 45(5A) to all assessees 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.*** ***(c) It is suggested that time limit for the purpose of exemption provisions of section 54, 54EC and the like should be reckoned from the date of completion certificate received of the property which should be taken as date of transfer as well.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
60.	***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	***New clauses may be inserted in section 47 to provide for:*** ***(i) Consequent exemption in***

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	amalgamation, of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company. However, no clause has been inserted to provide consequent exemption in respect of transfer of shares by the resident shareholders of amalgamating foreign company in consideration of allotment of shares of amalgamated foreign company. This appears to be an inadvertent omission, since in case of exemption under section 47(vi) in respect of transfer of capital asset in a scheme of amalgamation by an amalgamating company to the amalgamated company, where the amalgamated company is an Indian company, consequent exemption has been provided under section 47(vii) in the hands of the shareholders of the amalgamating company for transfer of shares of amalgamating company in consideration of allotment of shares of amalgamated company. Further, transfer in a scheme of business reorganization of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company should also be exempt under section 47. Business reorganization may be defined to mean the reorganization of business, otherwise than by way of amalgamation or demerger of foreign companies.	***respect of transfer of shares by the resident shareholders of the amalgamating foreign company if transfer is made in consideration of the allotment to him of any shares or shares in the amalgamated foreign company.*** ***(ii) exemption in respect of transfer in a scheme of business re-organisation of a capital asset, being a share of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	(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	***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***

Sr. No	Section	Issue/Justification	Suggestion
		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.	***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 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.	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.*** 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)***
61.	***Section 47 – Request to include family settlement in the exceptions and needs clarity for shares in***	In this regard, majority of court rulings are in one direction only i.e. family settlement does not attract capital gains. Further, there is a need to provide clarity in case shares in LLP and or company	***It is suggested that family settlement is also included u/s 47 so as to avoid unnecessary litigations. Further, it is also suggested that there is a need to***

Sr. No	Section	Issue/Justification	Suggestion
	LLP/Company	takes place during settlements of family trusts proceedings. Currently, in a lot of family business settlement cases, the same is being taking place in shares of LLP/company. E.g. consider a case of 3 brother as partners in LLP and later on family business settlement takes place on the occasion of demise of one of the brothers, then the tax treatment of the same needs to be clarified to avoid any litigation taking place in this regard.	***clarify and specify in the Act itself the tax treatment in case of family business settlements wherein shares in LLP and or company is involved.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
62.	***Sections 47(x) & (xa) and 49(2A) - Capital Gain on Conversion of Foreign Currency Exchangeable Bonds (FCEB) and other Bonds & Debentures***	Section 47 (xa) read with Section 49(2A) effectively provide that conversion of FCEB in to shares of any company will not give rise to capital gain and for the purpose of computing capital gain arising on sale of such shares at subsequent stage, cost of acquisition shall be taken as the relevant part of cost of FCEB. There is no corresponding provision for taking holding period of the shares from the day of acquisition of the Bonds [FCEB]. Similar difficulty exists in case of conversion of debentures and other bonds in to shares for which also similar provision exists in Section 47(x).	***It is suggested that appropriate amendment may be made in Section 2(42A) to provide that holding period of such shares should be taken from the date of acquisition of FCEB/debentures/ other bonds and not from the date of allotment of shares.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
63.	***Section 50B - Special provision for computation of capital gain in case of slump sale***	Section 50B of the Act provides for the special provisions for computation of capital gains in case of slump sale. The Finance Act, 2021 has substituted section 50B(2) of the Income Tax Act, 1961 as under: *'(2) In relation to capital assets being an undertaking or division transferred by way of such slump sale,—* *(i) the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48;* *(ii) Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner,*	***It is suggested that amendment be made in section50B(2) to provide benefit of indexation as per second proviso to section 48 while computing net worth for those undertaking which are held for more than 36 months.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.'; Thus the "Fair Market Value" of the capital assets as on the date of transfer will be considered as sale consideration for the purpose of charging capital gain on transfer of such capital assets on slump sale. However, the amendment had kept the condition of no indexation benefit being available in context of slump sale which is otherwise available or transfer under second proviso to section 48. The manner of calculating such fair market has been provided by insertion of Rule 11UAE. As per Rule 11UAE, the valuation is based on notional consideration wherein book value of specified assets is substituted by the fair market value. Therefore, even in cases where transfer happens at book value the notional consideration gets imputed and taxation happens at higher value. In a sense the deemed consideration is based on individual assets fair value. That being the case, it is inequitable policy response to not allow benefit of indexation on the cost of the undertaking. It is equitable that if the fair market value of capital is taken as sale consideration, there should be corresponding amendment in section 50B(2) with respect to allowability of benefit of indexation as per second proviso to section 48 while computing net worth for those undertaking which are held for more than 36 months.	
64.	***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.***

Sr. No	Section	Issue/Justification	Suggestion
			(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)
65.	***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 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.	***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)***
66.	***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.	***a) It is suggested to amend section 54EC so that time limit for investment in specified bonds may be allowed upto the due date of filing of ITR.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		3. Bringing the time limit upto the due date of filling of ITR shall also bring parity with section 54/54B/54F etc. where assessee is permitted to deposit the money in Capital Gains Account upto the due date of filing of ITR. In fact, assessee would be in a better position to take a call as to which exemption option is better suited for him. 4. In number of transactions, there is some difference in dates 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 first proviso to section 54EC(1), second 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 was made to plug the revenue leakage and to clarify the real intent of the law. Since, the second proviso is in furtherance of the first proviso; it may cause hardship in	***(b) Considering the fact that the second proviso takes care of the true intent of the law, and appears to be contrary to the first proviso to section 54EC(1), thereby causing hardship to the genuine taxpayers, it is suggested that the Act be amended to substitute the first proviso with the second 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***

Sr. No	Section	Issue/Justification	Suggestion
		genuine cases where investment has to be made in long term specified asset in respect of two previous years in a single financial year. For example, an assessee selling a long-term capital asset in February, 2022 (Previous year 2021-22) may invest in Section 54EC assets either in 2021-22 or 2022-23 (upto August, 2022). However, in respect of any long-term capital asset sold by him in the year 2022-23, 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.	***LAWS)***
67.	***Section 54EE – Request to notify fund***	In order to promote the start-up ecosystem in the country, it was envisaged in 'Start-up India Action Plan' to establish a Fund of Funds. With a view to provide tax incentive for investment in Fund of Funds, section 54EE was inserted in the Income-tax Act so as to provide exemption from capital gains if the long term capital proceeds are invested by an assessee in units of notified fund subject to condition that the amount remains invested for three years failing which the exemption shall be withdrawn. The investment in the units of the notified funds is allowed up to Rs. 50 lakh. Clause (b) of Explanation 2 to section 54EE defines "long-term specified asset" means a unit or units, issued before the 1st day of April, 2019, of such fund as may be notified by the Central Government in this behalf. However, as on date no such fund u/s 54EE has been notified by the Government. It may be noted that relevant date of 01.04.2019 has long passed but no such fund has been notified for claiming exemption u/s 54EE.	***It is suggested that specified fund u/s 54EE may be notified at the earliest so that exemption can be claimed by investing the amount in the units of such fund as envisaged.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
68.	***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	***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***

Sr. No	Section	Issue/Justification	Suggestion
		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 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	***clarification.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

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

Sr. No	Section	Issue/Justification	Suggestion
		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 net worth in X Ltd after demerger and the net worth transferred to Y Ltd. E.g. In case the highest price of shares of X Ltd as on 31st January 2018 is 120. And in case 20% of the net-worth is transferred to Y ltd. Then 120 x 80% = 96 shall be cost of 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.	
69.	***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 in the Act and hence it is creating lot of	***It is suggested that the meaning of variance under clause (a) be defined and given a reasonable tolerance limit. If the variance is within such limits, matter should not be referred to the valuation officer.*** ***Further, section 55A(b)(i) may be amended as follows:*** ***"(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee <u>AND HIGHER OF</u> by more than such percentage of***

Sr. No	Section	Issue/Justification	Suggestion
		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.	***the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf ; or"*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART F-INCOME FROM OTHER SOURCES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
70.	***Definition of the term relative - Explanation to Section 56(2) (vii)***	Under the existing provisions of section 56(2)(vii)/(x), 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	***Suggestions:*** ***(i) The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 should not be attracted once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient.*** ***(ii) Lineal descendants of brothers and sisters of self and spouse may also be included in the definition of "relative" in line with the provisions of section 13(3). Also, maternal grandparents may be included in the definition of relatives.*** ***(iii) The application of the provision should also be extended to the relatives of the members of HUF.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
71.	***Section 56(2)(x) - Limitation Period of 12 months of receipt may be relaxed to at least 24 months considering certain factors beyond the control of payer***	The Finance Act 2022 amended section 56(2)(x) so as to provide an exception that income-tax exemption shall be provided to ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of COVID-19 during FY 2019-20 and subsequent years. Further, it provides that the exemption shall be allowed without any limit for the amount received from the employer and the exemption shall be limited to Rs. 10 lakh in aggregate for the amount. The aforesaid provision, *inter alia*, provides that the amount of compensation be received within twelve months from the date of death of such person. Accordingly, the amendment has excluded from income any sum received by a member of the family of a deceased person from the employer of the deceased where the cause of death of such person is illness related to COVID-19 subject to the condition that the payment is received within twelve months from the date of death of such person. As a matter of fact, there are employers who have determined and agreed the amount to be paid on this account but as per agreement the amount is to be paid in instalments spread over couple of years. In certain other cases, amount finally determined is after finalisation of accounts and audit that may be paid after the current limitation period of 12 months. In such cases, exemption may be denied even in genuine cases as the amount would be received after a period of 12 months as of now. There is a clear	***In view of the position on ground and in order to make the amendment really effective, it is suggested that the condition of receipt within one year be relaxed (considering the fact that there may be sick companies' payer as well) as 'determined and agreed to be paid within (say) twenty-four months from the date of death'.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		case to consider relaxing the period of 12 months of receipt for claiming exemption. The issue gets further aggravated especially in case of sick companies which may require more time than normal employers for making payments as they are already short of funds/liquid cash.	
72.	***Section 56(2)(x) – Need for enabling flexibility in certain circumstances***	Section 56(2)(x) is an anti-abuse provision intending to curb tax avoidance. Normally the provisions should not get attracted where there is no possibility of any tax avoidance being there. However, the language of the section as presently worded does not allow any scope for explanation of a transaction being undertaken in a particular manner which may be at variance with the deemed value resulting from mechanical application of the rules. This has unintended results in that: (i) Section 56(2)(x) may get attracted to genuine transaction not leading to any tax avoidance. (ii) The mechanical application of deemed value creates additional tax liability based on historical costs with no correlation with the current economic value. It needs to be appreciated that no one valuation method or a price can be said to fairly deal with multifarious commercial realities of transactions even when no tax avoidance is involved. Although the Act itself has recognised it in several other provisions which are anti abuse provisions but then selectively this reality has been ignored in section 56(2)(x). For Example, Section 50C brought to check undervaluation in context of transactions in immovable properties provide an option for the assessee to present a case as to why stamp duty valuation is unjustified. Further, an inbuilt tolerance has been permitted (now upto 10%) for acceptance of transaction value. Incidentally section 56(2)(x) incorporates	***It is suggested that section 56(2)(x) may be amended to enable the person in receipt of property other than immovable property to offer explanation regarding the inadequacy of consideration, if any, vis-à-vis the fair market value as determined in prescribed manner and if such an explanation is found satisfactory by the assessing officer then the provisions of the said section shall not apply to such transaction.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		this principle only for immovable property transaction but then ignores the same principle for other transactions. There are many genuine reasons for transaction to happen at a price in variance to a mechanical rule: (i) the transfer of property may be under stressed conditions (like covid created circumstances), (ii) the volume of transaction and contractual terms may be at variance by what has been assumed. (iii) the special characteristics and nature of transaction like a case of bulk deal undertaken off exchange. (iii) historical costs may not reflect the present economic value of the property. In such situation to burden the taxpayer with tax liability based on an artificial construct with no recourse to even present the matter for consideration by the tax authorities and automatic presumption of undervaluation is not desirable. It is therefore of utmost importance looking into the wide scope of transactions covered under Section 56(2)(x) that an enabling provision is there in the section allowing the assessee an opportunity to substantiate that the transaction price variation is justified. It's ultimately for the tax department to analyse and examine the satisfactory nature of the explanation offered.	
73.	***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 Other Sources' in the hands of the recipient. The intent of legislation is to bring within ambit of taxation instances of 'transfer'	***A suitable clarification may be issued that section 56(2)(x) is applicable only for transfer of shares and not for issue of shares.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		for inadequate consideration and not 'issue' of shares. This section has replaced the erstwhile section 56(2)(viia) which was applicable only for transfer of shares as was mentioned in Explanatory Memorandum to Finance Bill, 2010.	
74.	***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.	***It is suggested that sub-clause (IX) of 4th Proviso to section 56(2)(x) may be amended to include following clauses of section 47*** • ***(xiii)*** • ***(xiiib)*** • ***(xiv)*** ***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
75.	***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**	***(i) It is suggested that the following transactions should be specifically excluded from the ambit of section 56(2)(x):*** • ***Buyback of shares***

Sr. No	Section	Issue/Justification	Suggestion
		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 Stressed Assets due to the COVID 19 pandemic.	• ***Slump sale*** • ***Issue of shares under ESOP*** • ***Rights issue*** • ***Conversion of preference shares/debentures.*** ***(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 pandemic. This benefit could be provided vide the following mechanisms :*** ***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.*** ***Prescribing a higher tolerance range wherein variation in the consideration received as compared to the stamp duty value or fair market value will be acceptable.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
76.	***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	***It is suggested that:*** ***(a) the proviso to section 57(i) be omitted as setting limit of 20% of interest deduction against dividend income;*** ***Alternatively, Proviso to section 57 may be modified to make reference to "gross total income" to clarify that deduction***

Sr. No	Section	Issue/Justification	Suggestion
		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.	***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.*** ***(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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
77.	***Section 60 - Transfer of Income where no transfer of assets***	The existing provisions of section 60 provide that income arising to a person under a transfer, where the asset from which the income arises is not transferred, shall be included in the total income of the transferor. The clubbing provisions are intended to check the abuse whereby the transactions are undertaken to split income with object of avoiding due payment of taxes. Private philanthropy is increasing globally with more and more wealth creators/ promoters pledging to give away a significant portion of their wealth for philanthropic purposes. A significant portion of the wealth for many such entrepreneurs is from the value of shares held by them in enterprises created by them. Globally, while many entrepreneurs retain control through voting rights over these enterprises, the	***It is suggested that section 60 may be amended to provide that it would not apply in respect of any transfer of income by way of written renouncement by any person in favour of a charitable institution having medical relief, educational purposes or yoga, etc. approved objects as the focus area of its activity and which is registered under section 12A/12AA/12AB of the Act provided that such an assignment is irrevocable for a long period of not less than 10 years (or even longer than that if the necessary comfort is available from that).*** ***This limited exception, with focused utilization and identified recipient (which is a well***

Sr. No	Section	Issue/Justification	Suggestion
		economic benefits arising from the shareholding - dividends, capital gains etc. are pledged towards philanthropic activities. Most of the philanthropic activities in India are currently focused towards enhancing health care, reducing extreme poverty, expanding educational opportunities etc. Achieving this goal requires a substantial and steady flow of funds. Taking a cue from their international counterparts, wealth creators/ promoters in India are seeking to channelize their income from their shareholdings for funding philanthropic activities. The crisis in second wave of Covid 19 pandemic has brought into focus the urgent and long term need for strengthening the health infrastructure in the country. The Private Philanthropy has an important role to play in supplementing the National efforts for improvement in the heath infrastructure of the country. Many wealth creators/ promoters especially of large listed companies need to retain control from a strategic business perspective. Various stakeholders such as Institutional investors, shareholders, JV partners etc. expect oversight and control from individual promoters. **In such a situation, the only way for achieving philanthropy is that while the promoter does not part with shares (i.e. voting rights), the economic benefits arising from the shareholding i.e. dividends/ capital gains can be renounced towards philanthropy. Similarly, there can be assignment of economic benefits like interest etc. flowing through other financial instruments/ units.** However, under the existing provisions of Section 60 this renouncement of economic interest towards philanthropy, without transfer of shares/financial instrument would result in dividend/ interest income being taxed in the hands	***monitored and controlled entity under the Act) would not in any way dilute the primary objective of the Section 60 of the Act (to address abusive / fraudulent splitting of income). However, it will ensure smooth optimal and assured flow of funds for the intended activity in the health infrastructure and medical relief.*** ***The suggested amendment is placed below:*** ***"Transfer of income where there is no transfer of assets.*** ***60. All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income;*** ***Provided that nothing contained in this section shall apply to a transfer by any person of his right to receive an income to a trust or an institution registered under section 12A or section 12AA or section 12AB, as the case may be, if the following conditions are satisfied, namely:-*** ***(i) the transfer is by way of an instrument in writing;*** ***(ii) the transfer is not revocable any time before expiry of a period of ten years from the date of transfer; and*** ***(iii) the primary activity of the trust or institution is providing of medical relief."*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		of the person renouncing the income. The clubbing of income in hands of the renouncer results in high tax incidence thereby, leaving lower funds available for philanthropy in the hands of the charity. Whereas clearly the right of disposal and use of income is with the charity. Considering the above, if the philanthropist/ donor intends to renounce their economic rights in the shareholding or assign economic benefits to a charitable organization having primary focus as medical relief, a facilitating mechanism needs to be put in place whereby the benefits can be passed on directly to the charitable institution. This would ensure huge fund flow to the health and medical sector without diluting any of the stated policy objectives of the Government.	
78.	***Section 68 - Cash credits – Provision for appropriate exceptions/carve outs for exemptions for loan taken from specified entities***	The Finance Act 2022 inserted a new proviso to section 68 so as to cast an additional onus to establish the source of source where the credits consist of *inter alia* 'loan or borrowing'. The said proviso provides that *where the sum so credited consists of 'loan or borrowing or any such amount, by whatever name called', any explanation offered by the Assessee shall be deemed to be not satisfactory unless:* *(a) the person in whose name such credit is recorded in the books of the Assessee also offers an explanation about the nature and source of such sum so credited, and* *(b) such explanation in the opinion of the Assessing Officer has been found to be satisfactory.* **Issue** The aforesaid proviso (a) refers to "the person", which *inter-alia* would include even non-residents. This will cause tremendous hardships in cases where loan / borrowing is taken from non-residents, in which case an onus will be casted even on non-residents to disclose the source of loan given. This carries the	***It is suggested that the amendment in clause (a) of the first proviso to section 68 be suitably amended so as to carve out appropriate exemptions/exceptions for loan taken from banks, financial institutions, SEBI regulated entities, Companies in which are substantially interested, charitable and religious institutions, cooperative societies, registered FIIs etc. and also to keep non-residents out of the scope of the said proviso. Further, exception should also be carved out for widely held companies taking loans or borrowings.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		risk of extra-territorial application of Indian tax laws to non-resident lenders. The said proviso seeks to increase compliance burden in every genuine case of loan taken e.g. even in case of home loans. The literal interpretation of the amendment may bring in its ambit genuine loans or credit facilities like deposits from public, inter-corporate deposits, convertible or non-convertible instruments, bank overdrafts, housing loans, etc. and source of such lenders and subscribers may be warranted.	

Chapter VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
79.	***Section 72 – 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.	***It is suggested that insurance companies should be allowed to carry forward and set-off unabsorbed business losses for an indefinite period.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
80.	***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	***It is therefore suggested to withdraw the said amendment. Alternatively, the limit of Rs 2 lakhs may be raised to atleast Rs 5 lakhs.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		loss under Income from house Property is allowed for a period of 8 assessment years. However, practically there would not be any positive income since the interest cost is very high.	
81.	***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.	***It is suggested to amend Section 72A(7)(aa) to also include Broadcasting, Media and Entertainment sector.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
82.	***Section 78 – Issue of carry forward and set off of losses of an LLP***	Currently, a firm assessee is not allowed to carry forward and set-off its losses to the extent of the share of the partner who has retired/ resigned as a partner. This is so, as firm and partners are treated as same under the civil law and a firm does not have a separate legal entity, unlike a company being a body corporate. Under Income Tax, firm is a separate person and it includes an LLP. LLP is a body corporate under LLP Act, 2008 and has separate legal entity and perpetual succession. An LLP may have 100 or 1000 partners, as there is no limit on maximum number of partners under LLP. Being a body corporate like company, an LLP having separate legal entity, the	***It is suggested that section 78 and 79 may be suitably amended to allow / restrict carry forward of losses and set-off of an LLP assessee under section 79 and not as per section 78.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		carry forward of losses and set-off should not be similar to a firm but should be similar to a company.	
83.	***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 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	***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.*** ***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
	(b) Insertion of third proviso in Section 79 - relief for change in shareholding of subsidiaries pursuant to resolution plan	Section 79 of the Income-tax Act,1961 restricts the carry forward and set off of losses in the hands of a closely held company, if the shares carrying more than 51% of voting power of such company are not beneficially held by persons who beneficially held such shares on the last day of the previous year in which such loss was incurred. In general, implementation of resolution plan in respect of a company undergoing resolution process may involve either issue of additional shares or other restructuring exercise resulting in change in the shareholding of such company beyond the permissible limit u/s 79. In addition, thereto, the company may	***It is suggested that section 79(2)(c) be amended to clarify that it applies both to the company undergoing resolution process as well as its subsidiaries. The provision may be modified as follows:*** ***"Provided also that nothing contained in this section shall apply to a company <u>as well as its subsidiary</u> where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional***

Sr. No	Section	Issue/Justification	Suggestion
		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 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.	***Principal Commissioner or Commissioner holding jurisdiction over the applicant".*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
84.	***Section 79 - Carry forward and set-off of***	In a recent decision, the Karnataka High Court (in the case of AMCO Power	***It is suggested that it be clarified that whether section 79 would***

Sr. No	Section	Issue/Justification	Suggestion
	losses in certain cases	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.	***apply only to a change of more than 51% in the immediate holding company, or whether it would also apply in the case of a change in the ultimate holding company.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
85.	***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.	***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
86.	***Section 79- Carry forward and set off of losses in case of certain companies***	Section 79 provides that in case of a Company, not being a company in which the public are substantially interested, shall not be allowed to carry forward and set-off the losses against the income of previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred. If the object of the section is seen it was introduced as an anti-abusive provision intended to curb the taxpayers attempts at acquiring loss making Company and claim / enjoy the tax benefits of such losses while conducting profitable business. It is worthwhile to note that the section explicitly uses terminology "person who beneficially held shares". The section therefore aims to protect	***It is suggested that section 79 may be amended to provide clarification regarding the "beneficially held" so that the determination of such holding for the purposes of this section is on the basis of both direct and indirect holding in the company.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		those cases wherein substantial ownership has been transferred within the same group i.e. the ultimate ownership does not undergo change. The core issue therefore is whether only direct ownership is to be considered then the concept of "beneficially held" becomes redundant. Therefore, the indirect shareholding has to be considered to determine as to whether there has been change in beneficial ownership or not. The dispute in this regard have been recurring and although majority of Judicial rulings have been in favour of taking indirect ownership into consideration to determine whether change has happened for the purposes of this section. Still there are few rulings which have taken only direct shareholding change to be sufficient. Considering the spirit and purpose of the section as well as majority of rulings it would be a step in right direction if an amendment is made in the section and clarification regarding the "beneficially held" is provided so that determination is on the basis of both direct and indirect holding in the company.	

PART B – DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
87.	***Section 80/80AC/139(3) – Disallowance to be made proportionately on the basis of delay in furnishing of return***	Section 80 mandating submission of return for losses prohibits carry forward and set off of losses u/s 72(1) or 73(2) or 73A(2) or 74(1)/(3) or 74A(3) unless return of income is filed as per the provisions of section 139(3). Section 139(3) provides that If any person who has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under the aforesaid sections, he should furnish, a return of income within the time allowed under section 139(1). Further, section 80AC mandates filing of return of income within the time allowed under section 139(1) so that assessee can claim deduction under Chapter VI-A under the heading "C.—Deductions in respect of certain incomes". A notable deduction under Part C is available under section 80P to cooperative societies. The aforesaid provisions appear to be pretty harsh considering contemporary situations. A delay of even one day in filing return of income within the time allowed under section 139(1) would mean that assessee would not be able to claim specified deductions and set/off and carry forward losses as specified. Delay in filing of return can be due to pretty genuine reasons and such harsh provisions would deny him the legitimate claims under the Income-tax Act, 1961. A reasonable proposition may be considered here and the provisions may be toned down a little. Here, it may be	***It is suggested that provisions of section 80 r.w.s 139(3) and section 80AC be suitably amended so that claim for deduction and set/off carry forward of losses may be disallowed proportionately (in instalments) on the basis of delay in number of days in furnishing of return of income.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		worth considering the fact that disallowances under the provisions of section 80 and 80AC may be made proportionate to the delay in furnishing the return of income. A certain percentage of deduction/losses setoff carry forward may not be allowed to be claimed basis the delay in furnishing the return of income. Even otherwise, belated return of income under section 139(4) can be furnished at any time before three months prior to the end of the relevant AY.	
88.	***Section 80-IBA – Need to prescribe a form/certificate***	Under section 80-IBA, inserted by the Finance Act, 2016 from 1.4.2017, deduction of 100% of profits derived from development of affordable housing projects approved on or after 1st June 2016 is available, subject to fulfillment of specified conditions. It prescribes multiple conditions to be fulfilled by assessee in order to claim deduction under this section. However, no monitoring mechanism has been prescribed to determine the correctness of claims made by the concerned assessees. This may ultimately lead to leakage of revenue.	***It is suggested that a monitoring mechanism i.e. a form may be prescribed under section 80-IBA to be certified by an Accountant so that assessees claiming deduction under this section may be checked for correctness of claims made as well as fulfilment of conditions prescribed i.e form to be prescribed to be incorporated in the section itself.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
89.	***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.	***It is suggested 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.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
90.	***Section 80C – Various suggestions***	PPF is used as a means of savings by entrepreneurs and professionals. While the assessees in employment have the compulsion of saving 12% of their salary (with matching contribution from employers), the only safe and tax efficient saving option available for self-	***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.***

Sr. No	Section	Issue/Justification	Suggestion
		employed assessees is PPF. Hence, the suggestion to increase the ceiling of PPF contribution to Rs.3 lakhs. This may also boost the domestic savings as a percentage of GDP and will have an anti-inflationary impact. Further, the present limit of INR. 1,50,000 has not been increased for several years and requires reconsideration. The revised monetary limit will help in increasing the savings of individuals and is necessary keeping in view the rate of inflation.	***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 assessees who have simply made contributions to this scheme and have not claimed any deductions. Hence, the suggestion to amend this section to the effect that in cases where deduction is not claimed under this section, only the appreciation component of***

Sr. No	Section	Issue/Justification	Suggestion
			the investment will be subjected to tax. Even if deduction is claimed, only the amount of deduction claimed should be added to the income at the time of withdrawal from the scheme and not the entire maturity proceeds. Of course, any appreciation over the principal invested can also be taxed as capital gain. ***(e) The quantum of deduction under section 80C be increased from Rs 1,50,000 to Rs 2,50,000 to provide savings opportunities to public at large.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
91.	***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.	***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.*** ***SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
92.	***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).	***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***

Sr. No	Section	Issue/Justification	Suggestion
			the Life insurance companies similar to that provided in section 80CCD(1B) of the Act. *(ii) 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.* *(iii) Above limits may be in addition to existing limit.* *(iv) 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)***
93.	***Section 80DDB - Rule 11DD - Insert COVID-19 as eligible disease***	In current times, it may be considered to allow medical expenditure incurred on treatment COVID-19 as expenditure incurred for treatment of specified disease for the purpose of claiming deduction under section 80DDB.	***It is suggested to insert 'COVID-19' as eligible disease for the purpose of claiming deduction under section 80DDB.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
94.	***Section 80EEA - Tax incentive for affordable housing***	In order to promote affordable housing, the Finance (No. 2) Act, 2019 has introduced a new section 80EEA so as to provide an additional deduction of up to Rs 1,50,000/- for interest paid on loans borrowed up to 31.03.2020 for purchase of an affordable house valued up to Rs 45 lakh. **Issue I**: **Request to provide benefit to assessees whose loan were**	***(i) Considering the fact that no additional deduction was available for loans sanctioned during the period 01.04.2017 to 31.03.2019 taken by eligible assessees for purchasing residential house property and satisfying conditions as mentioned in section 80EE/80EEA, it is suggested to make the following change in***

Sr. No	Section	Issue/Justification	Suggestion
		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 31.03.2022. Further, benefit of section 80EEA is available to assessee, being an individual not eligible to claim deduction under section 80EE. Here, it is pertinent to mention that benefit of section 80EE was available to assessees whose loan had been sanctioned by the financial institution during the period beginning on 01.04.2016 and ending on 31.03.2017. Accordingly, there are hundreds of assessees who may have loan sanctioned after 01.04.2017 but before 31.03.2019 for purchasing a residential house property and fulfilling other conditions as laid down in section 80EE/ section 80EEA. Such assessees did not get any income tax benefit in the absence of such a provision in income tax law during such period. In order to truly realize the goal of the current Government of 'Housing for All' and 'affordable housing', it may be considered that the provision of section 80EEA pertaining to period of sanctioning of loan may be taken from 01.04.2017 instead of 01.04.2019 i.e. the period when deduction under section 80EE was not available. **Issue II:** **Clarity regarding benefit to be available for loan taken for construction of residential house property as well** Section 80EEA(1) reads as under: "(1) In computing the total income of an assessee, being an individual not eligible to claim deduction under section 80EE, there shall be deducted, in accordance with and subject to the provisions of this section, interest	***section 80EEA(3)(i):*** ***"(i) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, ~~2019~~2017 and ending on the 31st day of March, 2020;"*** ***(ii) Accordingly, it is suggested that section 80EEA(1) may be amended as follows (by inserting the words 'or construction' akin to provisions of section 54 and 54F):*** ***"(1) In computing the total income of an assessee, being an individual not eligible to claim deduction under section 80EE, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition*** OR CONSTRUCTION ***of a residential house property."***

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

Sr. No	Section	Issue/Justification	Suggestion
		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 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	***appropriately. (say to Rs 55 lakhs). Further, akin to section 80EE, section 80EEA(3)(ii) may be amended to do away with the term 'stamp duty value'. In other words, the following change may be made in section 80EEA(3)(ii):*** ***"(ii) the ~~stamp duty~~ value of residential house property does not exceed ~~forty-five~~*** <u>fifty-five</u> ***lakh rupees;"***

Sr. No	Section	Issue/Justification	Suggestion
		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 is taken should be the first house property of the assessee. This condition is contrary to the provisions of section 54 and 23 of the Income-tax Act, 1961 which allows the beneficial provisions specified therein to assessees owning two house properties. In the Interim Budget presented on 01.02.2019, the Finance Act 2019 amended section 23 so that the assessee can claim two house properties as self-occupied for the purpose of calculating the annual value u/s 23(2) under the head 'Income from house property'. Even under the head 'income from capital gains', the assessee can opt for 2 residential houses of upto Rs 2 crores for reinvestment purposes (u/s 54) while calculating taxable capital gains. Accordingly, the aforesaid condition attached to the section 80EEA makes the assessee ineligible to claim the interest under this section if he owns any other house on the date of sanction of the loan.	***(iv) It is suggested that section 80EEA(3)(iii) may be appropriately amended so as to make it in line with the provisions of section 23 and 54 i.e following change may be made:*** ***"(iii) the assessee does not own ~~any~~ more than one residential house property on the date of sanction of loan."*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
95.	***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	***It is suggested that section 80EEB may be suitably amended so as to incorporate the condition of not owning any other electric vehicle at the time of sanction of loan as envisaged in the Explanatory Memorandum.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES***

Sr. No	Section	Issue/Justification	Suggestion
		order to avail the benefit of the deduction, one of the conditions 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.	***RELATING TO DIRECT TAXES)***
96.	***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.	***It is suggested that the ceiling of 10% of gross total income may be reconsidered u/s 80G.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

PART C – DEDUCTIONS IN RESPECT OF CERTAIN INCOMES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
97.	***Section 80PA – Applicability of MAT***	The Finance Act 2018 inserted a new section 80PA to incentivize Farm Producer companies on lines similar to existing section 80P. The provision provides for 100% deduction in respect of Farm Producer companies having total turnover upto Rs 100 crore whose gross total income includes the incomes specified therein. As aforesaid, on similar lines as of Co-operative Society, the Hon'ble Finance Minister of India had introduced section 80PA for Farmers Producer Companies vide the Union Budget, 2018 (100% deduction for 5 years). But there is no respective amendment in section 115JB (pertaining to Minimum Alternate Tax). There is a case for an an amendment in section 115JB also to fully exempt Farmers Producer Companies from taxation. The Hon'ble Finance Minister has said	***It is suggested to amend section 80PA/115JB appropriately such that MAT is not applicable to Farmers Producer companies.*** ***In case MAT is made applicable to Farmers Producer Companies, then there will still be a tax burden of 15% on producer companies.*** ***Appropriate amendment may be made in Section 115JB to free the Farmers Farmer's Producer Companies from tax bracket.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		in his budget speech that government is giving deduction to Farmers Producer Companies on similar lines as of Co-operative Societies. *Relevant extracts of the speech-* "47. Madam Speaker, at present, hundred per cent deduction is allowed in respect of profit of co-operative societies which provide assistance to its members engaged in primary agricultural activities. Over the last few years, a number of Farmer Producer Companies have been set up along the lines of co-operative societies which also provide similar assistance to their members. In order to encourage professionalism in post-harvest value addition in agriculture, I propose to allow hundred per cent deduction to these companies registered as Farmer Producer Companies and having annual turnover up to `100 crores in respect of their profit derived from such activities for a period of five years from financial year 2018-19. This measure will encourage "Operation Greens" mission announced by me earlier and it will give a boost to Sampada Yojana." *Co-operative Society Taxation* Section 115JC (pertaining to Alternate Minimum Tax) is applicable to Co-operative Societies. But, due to specific reference in Section 115JC, the Co-operative Societies which take deduction of Section 80P, can also reduce book profits by the amount of deduction claimed under Section 80P. It may be noted that while cooperative assesses are not exposed to tax based on book profit like companies, they are to pay a minimum tax based on adjusted total income which shall be computed by increasing the deductions as claimed by assessee under any section included in Chapter VI-A of the heading 'C – Deductions in respect of certain incomes' (but excluding any deduction u/s 80P) and deduction claimed u/s 10AA, with the total income	

Sr. No	Section	Issue/Justification	Suggestion
		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.	
98.	***Deduction in respect of interest on deposits in savings account - Section 80TTA***	Section 80TTA was inserted by the Finance Act, 2012 to provide deduction of up to Rs.10,000 in the hands of individuals and HUFs in respect of interest on savings account with banks, post offices and co-operative societies carrying on business of banking. However, it is unlikely that salaried individuals would keep their entire savings in a savings bank account, which earns a much lower rate of interest as compared to term deposits. They are likely to transfer some portion of their savings to several deposits to earn comparatively better returns. Therefore, since the money is anyway kept within the banking channels, it is suggested to include all types of deposit interest within the ambit of section 80TTA.	***It is suggested that interest on all types of deposits (eg FDRs as well as dividend from equity shares and mutual funds and share from cooperative society) may also be included within the scope of section 80TTA. Further, it is suggested that limit of Rs. 10,000 may be revised upwards as it was revised long time ago.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
99.	***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	***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. It may also be considered to include dividend received from equity shares and mutual funds and share from cooperative society under the ambit of section 80TTB deduction to further enhance the intended benefit.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
100.	***Section 80U – Consequential amendments required due to the enactment of 'The Rights of Persons with Disabilities Act, 2016' w.e.f. 28.12.2016***	Section 80U, *inter alia*, provide for a deduction to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability. As per Explanation to the said section, certain terms like "disability", "medical authority", "person with disability" and "person with severe disability" have been defined w.r.t. to provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. However, the said Act has been repealed w.e.f. 28.12.2016 with the enactment of the 'The Rights of Persons with Disabilities Act, 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.	***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. Further, the existing limits under Section 80U may be suitability revised upwards considering rise in cost of living. (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
101.	***Domestic Transfer Pricing [DTP] – Sections 92, 92BA, 92C, 92CA, 92D & 92E*** ***a) Arm's Length Price vs Ordinary Profits***	Section 80-IA(8) deals with "ordinary profits" whereas transfer pricing compliance refers to the "Arm's Length Price" of the transactions. Conceptually, 'price principles' cannot apply for benchmarking of 'profits'.	***In view of aforesaid, appropriate amendment may be made.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	b) Advance Pricing Agreements	Currently, APA provisions are being made applicable to only international transactions.	***The same should also be made applicable to domestic transactions covered by DTP provisions.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	c) Documentation Requirements	Where the volume of specified domestic transactions is below the threshold limit, the maintenance of documentation as required for transfer pricing should not be applicable.	***It is suggested that the maintenance of documentation as required for transfer pricing should not be applicable. Alternatively, a threshold limit of Rs. 25 crores be introduced for TP documentation requirements.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Chapter XII

DETERMINATION OF TAX IN SPECIAL CASES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
102.	***Section 115BAA and 115BAB – Request to allow deduction u/s 80G***	Finance Act 2021 provided for not to allow deduction under section 80G where the companies have opted for beneficial provisions of section 115BAA or 115BAB. Doing charity is a commendable thing and the same should be promoted by the Government for well being of society at large. Before the amendment made by Finance Act 2020, the donations made were considered for deduction under section 80G and same could enable the tax payer to save partial tax on the same. This would motivate the donor to donate and do more and more charitable activity which actually contributes to one of the objectives of the Government.	***It is suggested to include donations qualifying for deductions u/s section 80G for assessees opting for tax under the provisions of section 115BAA or section 115BAB.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
103.	***Section 115BAB(2)(b) -scope may be enlarged***	Currently, the benefit of reduced tax rate is given to companies engaged solely in the business of manufacturing. Manufacturing companies may be allowed to undertake certain trading or job work activities, in addition to their normal manufacturing activities as this will help to increase their revenue in the initial stages of operation. This is line with the normal practices followed by manufacturers who even undertake job-work as ancillary activity.	***It is suggested that section 115BAB(2)(b) may be amended so as to enlarge the activities undertaken by manufacturing companies under it (eg ancillary trading/job work).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
104.	***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.	

Sr. No	Section	Issue/Justification	Suggestion
		(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 including the ones opting for concessional tax regime to keep their mediclaim policy alive.	***(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 assessees opting for section 115BAC in order encourage such tax payers to keep their Mediclaim policy alive, considering limited affordable healthcare facilities in the country.***
		(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.	***(B) It is suggested that applicability of provisions of section 115BAC may be reconsidered in respect of non-resident individuals.***
		(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	***(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
		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. 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 assessees 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	***It is suggested that section 115BAC may be introduced only after putting in place adequate social security benefits for assessees opting for concessional tax rates and thereby not investing in long term retirement benefit schemes like PPF/NPS etc.***

Sr. No	Section	Issue/Justification	Suggestion
		rates 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 It may be noted that section 115BAC starts with a non-obstante clause i.e. notwithstanding anything contained in	***It is suggested that section 115BAC may be suitably amended so that eligible resident individuals can avail rebate u/s 87A.***

Sr. No	Section	Issue/Justification	Suggestion
		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.	***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
105.	***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 assessees 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. 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	***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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 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}. 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 115BBDAof the Income-tax act, 1961, being a latter insertion in the	

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

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

Sr. No	Section	Issue/Justification	Suggestion
		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.	
109.	***Section 115BBH - Scheme for taxation of virtual digital assets (VDA) - Certain Concerns to be addressed***	The Finance Act 2022 provided for a Scheme for taxation of virtual digital assets. This is due to the fact that there has been a phenomenal increase in transactions in virtual digital assets and considering the magnitude and frequency of such transactions requiring the need for a specific tax regime. Accordingly, certain new sections have been inserted (Section 115BBH & 194S) and others amended (Section 2 & 56) for the same. This is welcome move and need of the hour in contemporary times. However, even after a comprehensive taxation regime as provided, there are certain concerns that needs to be addressed for providing ease to concerned taxpayers for making compliances in this regard. **Issue I - Specific head to be specified under which income can be offered for taxation purposes** The Finance Act 2022 has not provided for the specific head under which income from virtual digital assets would be offered for taxation purposes. The Income-tax Act, 1961 (Act) provides for 5 heads under which an income can be offered for taxation purposes. In the absence of a specific head being provided under the law, taxpayers may offer the income from VDA under different heads and issues may arise leading to avoidable litigation and wastage of precious unnecessary resources to handle the same. Accordingly, the relevant provisions may provide for a specific head of income for taxation of VDA. **Issue II – Need to clearly**	***I. It is suggested that the relevant provisions may be inserted to provide for a specific head under which the income for taxation of VDAs may be offered by the concerned taxpayers avoiding any sort of confusion for both Income-tax department (ITD) and assessee concerned considering the capacity in which such VDAs are held.*** ***II. In view of above, it is suggested that definition of VDA***

Sr. No	Section	Issue/Justification	Suggestion
		specify/define exclusions from VDA In order to avoid litigation on the issue of what constitutes VDA, there is a need to clearly define the VDA with specific exclusions and inclusions. The current provision under section 2(47A) has certain issues. The current definition does not lay down clearly the exclusions and inclusions in VDA. Such a definition would unnecessarily lead to litigations which is a burden on both the concerned taxpayer and the ITD. As per the specified clause, a virtual digital asset means any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. Non fungible token and any other token of similar nature are included in the definition. The said definition of VDA may be further improvised and clear-cut exclusions and inclusions may be specified as far as possible in the Act itself which may go a long way in avoiding litigations on this front.	***as per section 2(47A) of the Act be suitably modified and improvised so that inclusions and exclusions from VDA be clearly spelt out in the Act itself which will provide a specific definition and intent to tax such VDAs thereby avoiding unnecessary litigations in this regard.*** ***(SUGGESTION FOR 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
110.	***Section 115JB/115JC - – May be consider for Removal of MAT/AMT***	MAT stands for Minimum Alternate Tax and AMT stands for Alternate Minimum Tax. Initially the concept of MAT was introduced for companies and progressively it has been made applicable to all other taxpayers in the form of AMT. MAT rate was lowered to 15 per cent from 18.5 per cent for companies that continued to claim exemptions. MAT is the minimum amount of tax required to be paid by a company, in case its normal tax liability after claiming deductions falls below a certain limit. MAT credit will also not apply to companies opting for the new rates. The new section – Section 115BAA has been inserted in the Income Tax Act,1961 to give the benefit of a reduced corporate tax rate for the domestic companies. Section 115BAA states that domestic companies have the option to pay tax at a rate of 22% plus surcharge of 10% and cess of 4%. Moreover, if companies opt for Section 115BAA, they need not to pay tax under tax under MAT. Moreover, if companies opt for Section 115BAA, they need not to pay tax under tax under MAT. After introduction of new Section 115BBA, now limited assesses are exposed to MAT, therefore it is creating unnecessary complications. It may be removed. Therefore, MAT/AMT may be abolished.	***It is suggested that that it may be considered for removal/abolition of MAT/AMT under sections 115JB and 115JC respectively.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
111.	***Section 115JB - Insertion of clause (iih) in Explanation 1 to section 115JB - Downward adjustment of aggregate brought***	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	***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***

Sr. No	Section	Issue/Justification	Suggestion
	forward losses and depreciation u/s 115JB	insolvency. Pursuant to enactment of IBC, the Sick Industrial Companies Act (SICA) has been repealed and provisions are made to enable sick companies undergoing resolution through BIFR to approach National Company Law Tribunal (NCLT). IBC provides for implementation of resolution plan which is intended to revive distressed companies in a time bound manner under the creditor in command process. Stakeholders have been facing enormous bottlenecks due to lack of clarity on tax issues. Unfortunately, there is no provision in IBC or Income-tax Act which provides for an overriding impact of resolution plan sanctioned by NCLT. The Finance Act, 2018 has provided that while computing book profits u/s 115JB of the Income-tax Act, a deduction will be allowed for aggregate of book profits and unabsorbed depreciation in case of companies in respect of which an application for initiating resolution process has been accepted by the adjudicating authority. **Issues:** (i) The language used in Section 115JB creates a confusion as to whether aggregate of losses and depreciation as per books is to be considered for deduction or whether aggregate of losses and depreciation as computed for tax purposes is to be considered for downward adjustment from book profits. (ii) The scheme of MAT is linked to book profits. The legislative intent also appears to be to refer to the amounts as per books of accounts. However, the language as is presently used in Section 115JB creates ambiguity. (iii) Re-organisation by way of merger of distressed company is one of	***per books of account. It may be provided that the aggregate of the brought forward losses and unabsorbed depreciation as at the end of the year preceding the year in which application is admitted may be allowed to be reduced from book profits.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
112.	***Section 115JB - Minimum Alternate tax***	It appears that Disallowance/Adding back of provision for diminution in value of any asset for computation of "book profit" is to be made in case of every class of company {clause (i) to Explanation 1 to section 115JB(2)}. However, in case of banking companies, the Government may reconsider applicability of the disallowance provision. This is because of the fact that in computation of business income under normal provision, deduction in respect of provision for bad debts is allowed under express provision contained in section 36(1)(viia) subject to the limit specified in the said section. If provision for bad debts is allowed as deduction in computation of business income under normal provision, there does not appear to be any cogent reason for disallowing the same in computation of "book profit" under section 115JB. Similarly, any special reserve created in accordance with the provisions of section 36(1)(viii) also does not require any disallowance in computation of book profit under section 115JB.	***Clause (b) and (i) of Explanation 1 to section 115JB may be amended as follows-*** ***"(b) the amounts carried to any reserves, by whatever name called [other than a reserve specified under section 33AC and a reserve created and allowed in accordance with the provisions of section 36(1)(viii)]*** ***….*** ***(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)(viia))"*** ***(SUGGESTIONS TO REDUCE/ MINIMIZE LITIGATIONS)***
113.	***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	***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***

Sr. No	Section	Issue/Justification	Suggestion
		due date of filing revised return has lapsed.	***are discovered.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***
114.	***Section 115 JB – Clarification regarding 'adjusted'***	Section 115JB which provides for levy of MAT on companies was, inter alia, amended by the Finance Act, 2017, with effect from 1.4.2017 to include sub-sections (2A), (2B) and (2C) in the said section. sub-sections (2A), (2B) and (2C) are applicable to companies which are required to comply with IND AS and are required to maintain their accounts as per the Companies (Indian Accounting Standard) Rules, 2015. Sub-section (2C) of section 115JB of the Act provides that the book profit of such assessee for the year of convergence and each of the following four years shall further be increased or decreased, as the case may be, by 1/5th of the 'transition amount'. The Explanation defines the year of convergence to mean the previous year in which the conversion date falls, that is to say, the year in which the companies have opted for disclosing their accounts under IND AS. 'Transition amount' has further been defined in Clause (iii) of the Explanation to mean the amount or the aggregate of the amounts adjusted in the other equity (excluding capital reserve and security premium reserve) on the convergence date, but not including the amounts enumerated in the Explanation. The reference to the term 'adjusted' in the definition means that the same will cover cases, where there has been revaluation of assets or liabilities on the convergence date and the difference between the original amount and the revalued amount has been adjusted (reflected in the other equity). The said difference, if it does not come within the exceptions, would form part of	***It is suggested that section 115JB(2C) may be amended to clarify that the term "adjusted" referred to in the transition amount is of the nature where any amount is included or taken to the "other equity" which otherwise would have had an impact on the profit or loss account either of current year or future year.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		'transition amount'. The context and object of the provision also indicate that the term 'transition amount' would only encompass a profit or a loss which have not been routed through profit and loss account but have been routed through the schedule of 'other equity' at the time of convergence, but it will ultimately have a bearing on the profits of the companies, either in this year or any subsequent year. The circular no.2/2018 [F.NO.370142/15/2017-TPL] dated 15th February 2018 issued by CBDT explaining the relevant provisions of Finance Act,2017 has stated as under : "I. RATIONALISATION MEASURES Rationalisation of provisions of section 115JB in line with Indian Accounting Standard (Ind-AS) ….. B. MAT on first time adoption (i) The adjustments arising on account of transition to Ind AS from existing Indian GAAP is required to be recorded directly in Other Equity at the date of transition to Ind AS. Several of these items would subsequently never be reclassified to the statement of profit and loss / included in the computation of book profits. Accordingly, the following treatment is proposed: …… (I)… (II)… (III) All other adjustments recorded in Reserves and Surplus (excluding Capital Reserve and Securities Premium Reserve) as referred to in Division II of Schedule III of Companies Act, 2013 and which would otherwise never subsequently be reclassified to the profit and loss account, shall be included in the book profits, equally over a period of five years starting from the year of first time adoption of Ind AS subject to the following—	

Sr. No	Section	Issue/Justification	Suggestion
		……" From the above it is clear that what is intended to be included in the term 'transition amount' is only adjustments which would otherwise have impact in the profitability of the assessee but on account of adoption of IND AS, the same are adjusted in other equity schedule and not Profit and Loss account. A transaction not having a bearing on Profit and Loss account was never intended to be covered by the amendment. It is therefore clear that merely because an amount has been reclassified to the other equity on transition it cannot be said to be "adjusted" to the other equity for the purposes of section 115 JB(2C). The amount should be in nature of revenue receipt and has potential impact on profits of the company either in the year of transition or in future. A capital receipt or any amount which is merely included or reflected in other equity but has no connection or impact of P&L of the company cannot be considered for inclusion in transition amount. Absence of any clarity in this regard is creating a situation where pure capital receipts are being included in transition amount and additions are being made to the book profits and taxes are being demanded on an item which by no logic or rationale can ever be said to be income of the company. As an example, case of Zero Coupon Optionally Fully Convertible Debentures can be seen. These are shown under borrowings and liability under the Indian GAAP, whereas as per IndAS they are instruments entirely equity in nature and are required to be shown under "other equity". The instrument doesn't have any relation with the profit or loss of the company. Under the instrument money is raised and repaid on redemption or is converted into equity.	

Sr. No	Section	Issue/Justification	Suggestion
		However, by mere reflection of the amount under "other equity" the same is being included in the transition amount. Taxing the amount of capital receipt when it is never an income of the assessee and is also repaid is clearly against the object and purpose of the section. In order to avoid long drawn multiple litigations it in necessary that the section 115JB(2C) is amended to clarify that the term "adjusted" referred to in the transition amount is of the nature where any amount is included or taken to the "other equity" which otherwise would have had an impact on the profit or loss account either of current year or future year.	

Chapter XII-D

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
115.	***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 same. Further,	***It is suggested that:*** **(i)** ***The continuance of the base provision itself in the current form may be re-considered. The provision was introduced at a time the tax rates were materially substantial, governance was difficult and closely held companies were almost universally governed by a singular family.*** **(ii)** ***Assuming it is not re-considered, by way of rationalisation, the applicability may be restricted to a case where the shareholder has at least 25% stake in each company, so as to capture a loan or advance to a concern.*** **(iii)** ***It would be desirable to address the genesis of the controversy instead of punishing the closely held companies. The current controversy may be retained with by the legislature specifying whether the amount of dividend should be taxed in the hands of the concerned shareholder or in the hands of the concern.*** **(iv)** ***It would also be fair to exclude loans and advances which are given on terms which are regarded as ALP and / or reasonable.*** **(v)** ***A liberal set off may be available by amending section 2(22)(e) to provide that, out of amount distributed by the company***

Sr. No	Section	Issue/Justification	Suggestion
		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 permanent loss to the	***either in the same year or in the succeeding year, the amount of DDT paid earlier will be considered as a credit against DDT payable at the time of distribution.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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
116.	***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	***In view of the concerns faced by foreign investors after introduction of section 115QA, suitable amendments may be carried out in the Income-tax Act, 1961 so that foreign investors do not have to pay tax when their holding results in losses only due to foreign exchange fluctuation.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		paid is nothing but tax paid by the foreign investor. The foreign investor is thus required to pay tax even when he makes losses. Private equity investor who had invested in India are facing double concern - firstly in the form of sharp depreciation in Indian Rupee and secondly in the form of tax amendment in the form of section 115QA. In this connection, it would be worthwhile to say that distributable income for foreign investor shall be worked out by making the foreign currency adjustment as per the provisions which exists in section 48 of Income-tax Act, 1961 used for computing capital gains, and tax should be levied only on the excess of amount received by investors over the amount brought in at the time of investment.	

Chapter XII-EB

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

DETAILED SUGGESTIONS

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

Sr. No	Section	Issue/Justification	Suggestion
		***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
118.	***Section 139 – Reduction in time to file belated and revised income tax return forms***	The Finance Act. 2021 amended sub-sections (4) and (5) of section 139 so as to reduce time to file belated and revised returns of income by 3 months to 31st December of AY from the end of the AY currently. **Issue** As per Finance Act 2021, now the due date for filing belated return is 31 December of the AY. It may create hardship to taxpayers as well as tax practitioners. Number of taxpayers requires filed ITR forms for the purpose of loan application, VISA, Income certificate, TDS refund and other purposes. But reducing the time period of filling the belated/revised return of income may result in missing the time of filing the ITR forms. This may happen due to various reasons like unawareness, health issues and many other reasons. Also, scrutiny assessments shall also be completed in the same time frame. This will burden the concerned assessees as well as tax practitioners. Other due dates in different Statutes are also prescribed within the same period majorly in September to December eg ROC filings, GST Returns and others. Reducing the time for filing belated/revised return by 3 months may lead to unnecessary burden to taxpayers and tax practitioners. By virtue of amendment to Section 139(4), no person can file belated return beyond 31st December of the assessment year. The reduction in time may create hardships for taxpayers eg due to reduction in time of filing, many assessees who have not filed Income tax returns due to genuine reasons may not be able to get loan from bank, insurance etc. Government is already	***It is suggested that the amendments in section 139(4)/(5) made via Finance Act 2021 may be omitted so that current timelines to file belated/revised return of income of one year from the end of AY may continue.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		collecting penalty on such late returns. If assessee is not filing return, indirectly there would be revenue loss to the government only.	
119.	***Section 139 – Due date to file ITR for assessees 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 assessees 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 assessees 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 assessees 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 assessees subject to tax audit and assessees liable to transfer audit. Accordingly, the due date for furnishing return for assessees required to file a report under section 92E may be extended to 31st December of the AY from current 30th November of the AY.	***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
120.	***Amendment in section 139(1) and 139(5)***	In the case of a firm which is required to furnish report from an accountant for entering into international transaction or specified domestic transaction, as per section 92E of the Act, the due date for filing of original return of income is the 30th November of the assessment year. Since the total income of such partner can be determined after the books of accounts of such firm have been finalised, it is provided that the due date of such partner be extended to 30th November of the assessment year. The Memorandum explains that sub-sections (4) and (5) of section 139 of	***It is suggested that section 139(5) should be amended so as to allow at least 3 months time for revising Transfer Pricing returns.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		the Act contain provisions relating to the filing of belated and revised returns of income respectively. The belated or revised returns under sub-sections (4) and (5) respectively of the said section before such amendment could be filed before the end of the assessment year or before the completion of the assessment whichever is earlier. Further, that with the massive technological upgrade in the Department where the processes under the Act are moving towards becoming faceless and jurisdiction-less, the time taken to conduct and complete such processes has greatly reduced. Therefore, it is suggested that the last date for filing of belated or revised returns of income, as the case may be, be reduced by three months. Thus, the belated return or revised return could now be filed three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. **Issue** Since a person required to furnish transfer pricing report can file return by November 30th, the amended sub-section (5) to section 139 will allow only one (1) month to such a person to revise return, which is too less time.	
121.	***Seventh proviso to section 139(1) – Mandatory furnishing of return of income - Deposit amount exceeding one crore rupees in current account may be made applicable to all types of accounts***	The Finance (No. 2) Act, 2019 amended section 139(1) by inserting a proviso so as to specify certain high value transactions wherein ITR filing is being made mandatory. One of the transactions specified is if during the previous year, assessee has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank. **Issue I: Scope to be enlarged** As all current accounts maintained with the banks are PAN based i.e. PAN is one of the mandatory KYC docs for	***(i) It is suggested that scope of clause (i) of seventh proviso to section 139(1) pertaining to deposit exceeding Rs 1 crore may be extended to include:*** ***(a) all types of account maintained with specified authorities i.e saving account etc (along with current account), and*** ***(b) deposits made in accounts maintained with a co-operative society engaged in carrying on the business of banking as well as a post office (apart from a banking***

Sr. No	Section	Issue/Justification	Suggestion
		opening a current account with a bank, so transactions in such current accounts can easily be tracked. There is a case to extend the scope of aforesaid specified transaction from deposit in a current account to all the accounts maintained with the bank i.e be it saving account or any other account. This will better serve the intent of the government to make mandatory filing of ITRs involving high value transactions. Further, the aforesaid high value transaction is limited to current account maintained with a banking company or a co-operative bank. It is better if the account maintained with a co-operative society engaged in carrying on the business of banking as well as a post office also gets covered here. This will also align with the provisions of section 194N. **Issue II: The term 'expenditure' may be replaced with term 'payment'** Clause (ii) and (iii) of seventh proviso to section 139(1) reads as follows: "(ii) has incurred ***expenditure*** of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or (iii) has incurred ***expenditure*** of an amount or 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.	***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.	
122.	***Section 139(4) – A reasonable penalty may be imposed for belated filing after expiry of time allowed***	As per section 139(4) pertaining to belated return, a person may furnish the return of any previous year at any time before the end of relevant AY (w.e.f. AY 2018-19). If a person misses the aforesaid deadline due to genuine reasons beyond his control, he may be allowed to use an extended date with a reasonable amount of penalty.	***It is suggested to amend section 139(4) so as to allow one more year after the end of AY for filling the belated return but with a reasonable amount of penalty say of Rs 100 per day.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
123.	***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*	***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
		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 return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.";* Reference to return filed in response to section 142(1) is missing in new sub-section (4) and sub-section (5) of section 139. As per the Explanatory Memorandum to the Finance Bill, 2016, the return which can be revised under section 139(5) also includes a return furnished in response to notice issued under sub-section (1) of section 142. However, reference to notice under section 142(1) does not find place in the new sub-section (5) in the Finance Act, 2016.	
124.	***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.	***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.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
125.	***Section(s) 139(8A) & 140B - Provisions for filing of updated return – Certain concerns to be addressed***	The Finance Act 2022 enacted a scheme for furnishing of updated return under sections 139(8A) and 140B of the Act. The new provisions, *inter alia*, provides for permitting specified taxpayers to file an Updated Return on payment of additional tax. This updated return can be filed within two years from the end of the relevant assessment year. It's a welcome step for promoting	

Sr. No	Section	Issue/Justification	Suggestion
		voluntary tax compliance and also avoiding unnecessary litigations as well. However, certain concerns as raised below needs to be addressed for better implementation of the scheme. **Issue I - Need to provide provisions for assessees reporting reduction in losses in their Updated return** The relevant provisions envisages that section 139(8A) shall not apply, if the updated return, ***is a return of a loss*** or has the effect of decreasing the total tax liability determined on the basis of return furnished under section 139 or results in refund or increases the refund due on the basis of return furnished u/s 139, of such person under the Act for the relevant assessment year. The said provision inadvertently misses a situation wherein a person would like to report reduction in losses. Needless to say, reduction in losses is akin to increase in income and accordingly should come under the purview of the said provisions. Accordingly, the relevant provisions need to be amended to provide for such a situation wherein an assessee voluntary wishes to file the updated return and reporting reduction in losses. Also, as of now, the provisions does not provide for a proper refund mechanism of prepaid taxes. It may also be considered to include cases with refund for filing of the updated returns. The refunds may be subjected to some penalty on similar lines with the additional tax. This will enable assessees to furnish ITRs who have missed filing of returns due to genuine reasons. **Issue II – Suitable reduction in rates of additional income-tax payable and that too on tax amount only excluding interest** The provisions of section 140B, *inter alia*, provides that the additional tax, payable at the time of furnishing the return under section 139(8A), shall be equal to 25% of aggregate of tax and	***I. It is suggested that provisions of section 139(8A) be suitably amended so as to provide for a situation wherein assessees wishing to file updated returns for furnishing reduction in losses be permitted to do so. It is further suggested that refund cases may also be permitted subject to levy of penalty at reasonable rates.*** ***II. It is suggested that provisions of section 140B requiring payment of additional income tax @ 25/50% on aggregate of tax and interest may be suitably relaxed so that the rate of tax be reduced to a reasonable level say 15/25% and further, it should be calculated/payable on tax***

Sr. No	Section	Issue/Justification	Suggestion
		interest payable, as specified, if such return is furnished after expiry of the time available under section 139(4)/(5) and before completion of period of twelve months from the end of the relevant assessment year. However, if such return is furnished after the expiry of twelve months from the end of the relevant assessment year but before completion of the period of twenty-four months from the end of the relevant assessment year, the additional tax payable shall be 50% of aggregate of tax and interest payable. The aforesaid provision appears to be pretty harsh and may discourage voluntary compliance from concerned taxpayers. In order to encourage taxpayers to come forward and accept the tax liability inadvertently missed, the current rates of tax i.e. 25% & 50% appears to be on a higher side. This high rate of additional tax payable instead of encouraging, may discourage as penal tax amount would be very high and concerned taxpayer may choose to further evade it instead of coming forward and having a clean slate. Even otherwise, high rates of additional income-tax appears to be against the objective of introducing the said provision of filing updated return. Further, the said additional tax would be calculated on income tax amount due as well as on interest payable. That would again lead to high tax incidence on the concerned taxpayer coupled with the fact of already higher rates of 25/50% additional tax. In order to ease tax burden and to achieve the true intent of introducing provision of filing of updated tax returns voluntarily by concerned taxpayers, it may well be considered to reduce current rates of 25/50% and that too to be calculated and payable on income tax component only excluding interest amount payable. **Issue III - Need to relax certain**	***component only clearly excluding the interest amount to encourage voluntary compliance in true sense.*** ***III. It is suggested that the***

Sr. No	Section	Issue/Justification	Suggestion
		eligible conditions/exclusions for filing updated returns like assessment proceedings The aforesaid provisions, *inter alia*, provides that no updated return shall be furnished by any person for the relevant assessment year, where any proceeding for assessment or reassessment or recomputation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case. Here, there is a case of relaxing this condition i.e. updated return may be permitted in cases where assessment proceedings have been completed and where assessment proceedings are pending, updated return may continue to be non-permitted. In cases where assessment proceedings are completed, it is clear that concerned taxpayer is coming forward on a voluntary basis as such incomes have not been caught in the assessment proceedings completed. This is also one of the objectives behind introduction of provisions of updated returns.	***condition in section 139(8A) pertaining to making assessees ineligible to file updated return in cases where any proceeding for assessment or reassessment or recomputation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case may be suitably relaxed and accordingly allow filing of updated returns wherein assessment proceedings have been completed.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
126.	***Section 139A – Amendment / surrender of PAN***	There is no provision as of now for amendment /surrender of PAN. Lots of jurisdictional issues arise due to non-intimation of change in address etc.	***It is suggested that provision may be made for:*** ***(a) application within 30 days of amendment in PAN data and*** ***(b) surrender on*** ***- death (by legal representative),*** ***- merger,*** ***- conversion,*** ***- liquidation,*** ***- strike-off.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
127.	***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	***It is suggested that aforesaid sections be added to section 139A(1)(iii) where only persons covered u/s 139(4A) are required***

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

Sr. No	Section	Issue/Justification	Suggestion
		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.	
129.	***Section 143(1)(a)(iv) – Automatic processing of income leading to increase in returned income basis audit report***	The Finance Act. 2021 inter alia, amended section 143(1)(a)(iv) so as to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income. The amendment enables increase of income indicated in the audit report but not considered in the return of income in addition to disallowance of expenditure in same manner. The information in the audit report is only	***It is suggested that amendment in section 143(1)(a)(iv) made by Finance Act 2021 may be reconsidered.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		statement of facts to assist an Assessing Officer to assess the income correctly. They are not to be construed as items to be considered as income or disallowed as expenditure. Automatic additions to Income or disallowance of expenditure without application of mind or giving an opportunity to the assessee would amount to denial of natural justice. If necessary, where such information is available in the audit report, such returns may be selected for Limited scrutiny and an opportunity be given to the assessee to state his reasons why an income should be increased, or an expenditure disallowed	
130.	***Section 145 - Taxation of retentions money/margin money in the hands of contractors / sub-contractors***	Income tax law is more or less settled that retention money becomes taxable only when 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.	***It is suggested that suitable amendment be made to overcome the taxation of retentions money/margin money in the hands of contractors / sub-contractors.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
131.	***Section 145 – Reconsideration of notified Income Computation and Disclosure Standards***	Section 145(2) empowers the central Government to notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income. Accordingly, 10 ICDSs were issued in the past and are applicable to assessees as specified. Looking at the current tough conditions and various compliances to be made under various Statutes by the assessees, there is a need being felt for ICDS reconsideration and its possible withdrawal as no purpose is being served but an unnecessary compliance burden is imposed on the assessees. In	***It is suggested that ICDS as notified u/s 145(2) may be reconsidered and ultimately be omitted in case felt appropriate. The impact of ICDS on revenue may be studied by conducting detailed research on ITRs of the assessees on whom it is being made applicable.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***

Sr. No	Section	Issue/Justification	Suggestion
		case felt appropriate, there is a need to withdraw ICDS. This may be done by conducting independent study and facts by various other means. Impact of revenue due to ICDS may be studied. Compliance burden and complexity due to ICDS needs to be done away with for ease of doing business. ICDS apart from preponing tax payment (timing difference) is otherwise may not be serving any other purpose. That part is also taken care by certain other provisions in the Act like Section 43B and the like. Pros and cons of ICDS may be studied by the CBDT for its further evaluation. It may be noted that although ICDS are notified u/s 145(2), certain ICDS provisions have been enacted in the past due to various judicial decisions in 2018.	
132.	***Provisions of Section 145A- Method of accounting in certain cases: Needs to may be omitted***	Section 145(1) of the IT Act provides that the income chargeable under the different heads of income shall be computed in accordance with either cash or mercantile system of accounting which is regularly employed by the assessee. Section 145(2) of the IT Act further provides that the Central Government may notify Income Computation and Disclosure Standards ('ICDS') to be followed in computing the income taxable under the different heads of income. The Central Government already notified ICDS to be followed while preparing Financial Statements. There is conflict between accounting standard prescribed and Section 145A For example: Closing stock has to be strictly valued as per AS-2 and not as per section 145A when question of valuation comes. Section 145A says that assessee should continue that method of accounting which is regularly followed by the assessee in his business. Therefore, AS-2 is preferred over Section 145A in any case. AS-2 is	***It is suggested that section 145A may be omitted/reconsidered or suitably amended by aligning the ICDS as the current provisions are not in line with the Accounting Standard worldwide.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		used for accounting purpose and that value is used in for valuation of net profit chargeable to tax under Business income. Section 43B is related to the head 'Income from business and profession'. It states some statutory expenses that can be claimed as deduction from the business income only in the year of actual payment irrespective of the year of accrual of its liability. It is just a theoretical exercise, may be omitted	
133.	***Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Section 155(14) has elapsed) demanded by the Government authorities at a later date***	Currently, many government/ semi-government authorities (viz. Mining Department) have been demanding TCS of earlier years for which assessments have already been completed, since they had not collected the TCS in those relevant years. After making payments of TCS the certificates for the same are issued in current year giving reference of expenditure incurred by payer for earlier financial years. As per the provision of section 155(14) "the credit of TDS/TCS certificates is available to assessee within 2 years from the end of the assessment year in which such income is assessable" but since the payment & certificates are received after the above-mentioned period, it is difficult to get the credit for the same. The demand at such later date itself is causing undue hardship to the assessee and further the credit for the same is not available to the assessee because the assessments have already been completed. Hence, department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.	***It is suggested that considering the hardship being faced by assessees in respect of cases mentioned aforesaid, the department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned u/s 155(14) has expired.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
134.	***Section 159 - Hardship in obtaining***	Section 159(1) provides that *"Where a person dies, his legal*	***Considering the problems faced as aforesaid, it is suggested that***

Sr. No	Section	Issue/Justification	Suggestion
	'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	*representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased."* Further, section 159(3) provides that *"The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee."* Thus, the legal representative of the deceased assessee needs to comply with various provisions like filing of Return, payment of taxes, complying with assessment proceeding on behalf of the deceased assessee. Filing of tax returns electronically is mandatory for assessees except a few exceptions as provide in Rule 12. The Existing procedure to register oneself as legal representative of deceased assessee for filing return of income of deceased assessee is described in brief as below: a. The legal representative needs to register himself as 'Legal Heir' on the E-Filing portal in order to file return of deceased assessee. This is for the period that Income was earned by the deceased but cannot be returned by him since he has since passed away. b. Request needs to be made through E-Filing portal for above registration by providing certain details of deceased assessee along with certain specified documents. c. The following are the documents which are to be submitted/ uploaded: i) Copy of Death Certificate. ii) Copy of PAN of deceased. iii) Self attested PAN copy of the Legal Heir. iv) Legal Heir Certificate issued by the Court/Local Revenue Authority. or	***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
		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 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	

Sr. No	Section	Issue/Justification	Suggestion
		a very complex exercise with heavy monetary obligations in terms of cost and time.	
135.	***Section 171 - Assessment after partition of a Hindu undivided family***	Section 171(1) provides that an HUF hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be an HUF, except where and in so far as a finding of partition has been given under this section in respect of the HUF. However, currently there is no procedure specified anywhere regarding intimation of partition by the HUF to the concerned AO. Accordingly, it is desirable that a mechanism may be devised for such reporting. An accountant certificate certifying the partition of HUF along with its assets and liabilities position and its allocation among its members would be beneficial to the revenue.	***It is suggested that section 171 may be suitably amended such that powers be provided to the Government to notify an Accountant certificate to be issued intimating the partition of the HUF. Necessary amendments may be made in the Income-tax Rules, 1962 thereafter regarding notification of an Accountant certificate and amendment in ITR Forms.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

COLLECTION AND RECOVERY OF TAX

PART B – DEDUCTION AT SOURCE

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
136.	***Section 192 – Need for clarity on TDS on family pension***	There are so many cases relating to confusion on TDS on family pension. Some deductors deduct tax u/s 192 as salary but being the fact that the person who is getting the pension is not employee of the organization. Others deduct tax u/s 194A for avoiding any difficulties in ITR filing of the person getting the pension. There are so many cases where people get notice from department regarding processing of ITR which is due to the section quoted in TDS returns. There must be a specific provision for TDS on Family pension. This would help assessee as well as department to get rid of unnecessary time-consuming litigations.	***It is suggested to insert a new section under TDS provisions taxing family pension exceeding say Rs 2,40,000 pa liable for TDS @ 10%. Simultaneously, section 192 may be amended to specifically exclude taxability of pension under its provisions.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
137.	***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 business trust states the following- "*The income by way of interest received by the business trust from SPV is accorded pass through treatment i.e.,* ***there is no taxation of such interest income in the hands of the trust and no withholding tax at the level of SPV***.	***It is suggested that as provided in section 194A, a similar exclusion may be provided in section 193 with respect to no applicability of tax withholding on any income by way of interest referred to in section 10(23FC).*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		(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).	
138.	***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- (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	***It is suggested to*** ***(1) scrap TDS on interest awarded by Motor accident claim Tribunal and*** ***(2) Insert a specific exemption under section 10 for amount received on Compensation, enhanced compensation and interest on compensation awarded by Motor Accident Claim Tribunal.*** ***194A(3)(ixa) may be omitted and in section 194A(3)(ix), word 'or paid' can be inserted between 'credited' and 'by way of interest'.*** ***There are separate exemptions available under 10(10B) for 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***

Sr. No	Section	Issue/Justification	Suggestion
		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 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	***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
		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.	
139.	***Section 194A – Need to raise threshold limit from 5,000 to Rs 10,000***	The present threshold limit of Rs. 5000.00 for deduction by other than Banks is very old and is too low. This limit of Rs. 5000.00 u/s 194A was fixed long ago, which is as much as 30 years ago. The basic exemption limit has increased multi-fold but this remained at the same level since then. This needs immediate change. Once the limit is raised to Rs 10,000 then there would be two thresholds only u/s 194A i.e 10,000 and 50,000 making compliance easier.	***It is suggested to raise the threshold limit of Rs. 5000.00 to Rs 10,000 u/s 194A applicable to deductors other than bank.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
140.	***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-	***To provide relief to the genuine taxpayers paying interest to NBFC's, it is suggested that the section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies. Further, in order to ensure compliance of the provisions of the Act for timely collection of taxes, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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 is of lending money under various products just like Banking Company or a co-operative Bank. b) There is no mechanism for deduction of tax on interest paid by the assessees as the NBFCs collect cheques of EMI for the tenure of loan. c) NBFCs are also regulated by RBI just like Banking Company and a Co-operative Bank. Considering the fact that there is no mechanism for deduction of tax on interest paid by the assessees as the NBFCs collect cheques of EMI for the tenure of loan, the non-compliance of the provisions of this section is inevitable. However, the said provision creates problem for the assessee who has borrowed money as he is unable to claim deduction in respect of said interest due to operation of section 40(a)(ia).	
141.	***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.	***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
142.	***Section 194H – Request to increase TDS exemption limit to Rs 40,000***	The Digital India programme is a flagship programme of the Government of India with a vision to transform India into a digitally empowered society. In order to transform the entire ecosystem of public services, banking etc. through the use of information technology, the Government of India has launched the	***It is suggested that TDS exemption limit u/s 194H may be increased to Rs 40,000 in cases of recipients having PAN.*** ***It will eliminate the following difficulties / challenges for the Merchants, Companies as well as***

Sr. No	Section	Issue/Justification	Suggestion
		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. 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	***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 paisa as well. With the above volume, filing of TDS Returns and generation of TDS certificates is a challenge;*** ***- TDS provisions are applicable once the threshold limit crosses. In the given business scenario, incentives payable to the merchants is based on the business given by the merchants and thus, the projection of incentive payable by the Company is not possible. If the Company starts TDS deduction before the threshold limit crosses, it will not be acceptable by the merchants;*** ***- There are enormous number of transactions with these small outlets / merchants, due to which the exercise of Income-tax department also gets burdened (i.e., humongous data in the TDS return, issuance of TDS certificates, transactions in Form 26AS). The administrative burden on the TDS officers also increases for the verification / reconciliation of such humongous data.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
143.	***Section 194-IA- Issues***	The provisions for tax deduction is causing hardship to those sellers who claim full capital gains exemption by investing the capital gains or the net consideration, as the case may be, in the manner provided in section 54, 54F, 54EC etc., since in such cases, there would be no tax liability on account of capital gains. Further, for the purposes of section 54F and 54GB, the entire net consideration is required to be invested, which would pose a difficulty, since tax would already have been deducted from the net consideration.	***It is, therefore, suggested that section 197A may be amended to permit the assessee to make an application to the Assessing Officer for issuing a certificate for no deduction of tax or deduction of tax at a lower rate. In the alternative, the seller may be permitted to give a declaration to the Assessing Officer and furnish a copy of the same to the buyer.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
144.	***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 assessees are getting the property registered at just under Rs. 50 lakhs of sale consideration to avoid TDS u/s 194-IA. Also, as per Income-tax Rules, any sale purchase of property whose stamp duty value exceeds Rs. 30,00,000 needs to be reported in Statement of Financial Transaction.	***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)***
145.	***Section 194-IA – Issue in computing amount of tax to be deducted at source in view of***	The Finance Act 2022 amended section 194-IA of the Act to provide that in case of transfer of an immovable property (other than agricultural land), tax is to	***It is suggested that amendment in Section 194-IA be reconsidered, and tax be calculated on the basis of the***

Sr. No	Section	Issue/Justification	Suggestion
	amendment made	be deducted @ 1 % of such sum paid or credited to the resident or the ***stamp duty value*** of such property, whichever is higher. In case the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than fifty lakh rupees, then no tax is to be deducted under section 194-IA. This is to address the inconsistency in the provisions of section 194-IA and sections 43CA and 50C of the Act. However, there would be issue on computing tax amount in certain cases requiring further amendment to address the issue raised. **Issue** In a case where payments of the sale consideration are being made by the Buyer through Advances, it will be very difficult for the Buyer to comply with the requirement of TDS on the basis of Stamp Duty Value which may be determined long after the payment of advances. So, there will occur unintentional default if the TDS is required to be made on the basis of Stamp Duty value which may be determined after a long period as per actual situation on the ground.	***actual sale consideration as earlier. Further, suitable amendments may be made to address the issue raised by allowing deduction of tax at source u/s 194-IA in the last instalment or at the time of transfer on the amount of difference between Stamp Duty value and actual sales consideration.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
146.	***Section 194J - Fees for professional or technical services***	The amendment to section 194J by the Finance Act, 2012 requires deduction of tax at source @ 10% on any remuneration or fees or commission, by whatever name called, to a director of a company, other than those on which tax is deductible under section 192. However, the independent limit of Rs.30,000 each provided for under section 194J in respect of other payments covered therein, namely, royalty, fee for technical services, fee for professional services and non-compete fees, as a threshold, beyond which TDS @ 10% would be attracted, is not being provided in respect of director's remuneration. This unintended inequity may be removed.	***It is suggested that section 194J be amended to provide an independent limit of Rs. 30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
147.	***Section 194J –***	Section 194J was amended by the	***It is suggested to issue suitable***

Sr. No	Section	Issue/Justification	Suggestion
	Clarification for rate of TDS	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 technica service, not being a professiona service. • Payment for royalty, where such royalty is in the nature o consideration for sale, distribution o 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' 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'.	***clarification as regards the nature of payments that would be subject to TDS @ 2% or 10%.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
148.	***Section 194N - Practical difficulties to be faced and clarifications required regarding implementation of***	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	***(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***

Sr. No	Section	Issue/Justification	Suggestion
	provision of TDS @ 2% on cash withdrawals exceeding Rs 1,00,00,000	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 ***making business payments*** in cash, I propose to levy TDS of 2% on cash withdrawal exceeding ` 1 crore in a year from a bank account." [emphasis supplied] The Hon'ble FM referred to discouraging 'business' payments in cash while introducing provisions of section 194N. Payments for business are usually made from 'current account' maintained with banks. However, the text of the section 194N as per Finance (No. 2) Act, 2019 levies TDS on withdrawal from all types of accounts, be it current or saving or any other account maintained with the specified authority. The inconsistency between budget speech and the finance Act needs clarification. **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	***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).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)*** ***(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***

Sr. No	Section	Issue/Justification	Suggestion
		(iii) a post office, who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, ***to any person (herein referred to as the recipient)*** from ***one or more accounts maintained by the recipient*** with it shall, at the time of payment of such sum, deduct an amount equal to two per cent. of sum exceeding one crore rupees, as income-tax:" Referring to the term 'recipient' as used above, it may be noted that the said term is not defined anywhere. Also, reference to 'any person' is restricted to the 'recipient'. It is stated that the account is to be maintained by the recipient. It may be possible that the 'recipient' and the 'account holder' are two different persons. However, the intent of the amendment seems to identify 'recipient' as an account holder. If it is so, then if a person other than account holder withdraws amount; will this section be not applicable, or TDS would be levied, needs to be clarified.	***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)***
149.	***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, Mud Bricks, allied items, engaging labour force for both skilled & unskilled,	***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.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
150.	***Section 194-O – Practical implementation issues***	As per section 194-O of the Act, an e-commerce operator is liable to 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-	***It is suggested to make suitable amendments to address the highlighted issues.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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 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.	
151.	***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	***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***

Sr. No	Section	Issue/Justification	Suggestion
		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?	***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)***
152.	***Section 194Q & section 206C(1H) – Simultaneous application creating issues and the new provisions require reconsideration***	The provisions of section 206C(1H) and section 194Q are creating issues in its simultaneous implementation for assessees on whom it is applicable. There may not be any need of these more or less identical provisions under TDS and TCS. Entire data pertaining to such transactions has already been captured by the GSTIN and the CBDT may get the same through CBIC which are two separate departments of the Ministry of Finance. The confusion would only be heightened as a seller has to check and maintain appropriate records of buyers to deduct tax to ensure that appropriate TCS compliance is undertaken by seller in respect of buyers who is not deducting tax due to turnover below the threshold limits.	***In view of the aforesaid, it is suggested that provisions of section 206C(1H) and section 194Q pertaining to simultaneous application on same assessee w.r.t. TCS and TDS provisions may be reconsidered and one of the provisions may be omitted or clarificatory circular for its application may be issued. It is further suggested that the Income-tax Act, 1961 may clearly specify which of the two sections provisions would be applicable in case the transaction is liable for both TDS and TCS as per provisions of section 194Q and section 206C(1H).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
153.	***Section 194R – TDS on benefit or perquisite – Need to clearly define the 'benefit' or 'perquisite -Other issues arising out of clarificatory Circulars issued***	Section 194R as introduced vide the Finance Act, 2022 mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ I0% of the value or aggregate of value of such benefit or perquisite, before providing such benefit or perquisite. The benefit or perquisite may or may not be convertible into money but should arise either from	***It is suggested that the terms 'benefit' or 'perquisite' as per section 194R be clearly defined in the Income-tax Act, 1961. Further, it is, suggested that Section 194R may be redrafted to make it clear that Section 194R applies to a person carrying on a business or profession and who in the course of such business or***

Sr. No	Section	Issue/Justification	Suggestion
		carrying out of business, or from exercising a profession, by such resident. This deduction is not required to be made, if the value or aggregate of value of the benefit or perquisite provided or likely to be provided to the resident during the financial year does not exceed Rs 20,000. The responsibility of tax deduction also does not apply to a person, being an Individual/Hindu undivided family (HUF) deductor, whose total sales / gross receipts / gross turnover from business does not exceed Rs 1 crore, or from profession does not exceed Rs 50 lakh rupees, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by him. **Issues** Being a new provision, persons liable to deduct tax are facing genuine difficulties in its implementation. There are penal provisions for non deduction of tax at source in general. An issue currently being faced is the determination of 'benefit 'or 'perquisite' for the purpose of section 194R. It is of utmost importance as tax is to be deducted on the value of 'benefit' or 'perquisite'. We are appreciative of the fact that the CBDT has already proactively come out with 2 Circulars on section 194R providing clarifications on various aspects including determination and value of 'benefit' or 'perquisite. However, such clarifications are situation and business specific, so there is a need to clearly define the term 'benefit' or 'perquisite' in the Income-tax law itself. It would codify the definition of the aforesaid terms and would minimise litigations arising in this behalf and would also be a step in promoting ease of doing business. It is pertinent to mention that the two Circulars issued by the CBDT i.e Circular No. 12/2022 dated 16.06.2022	***profession gives any benefit or perquisite to a person carrying on business or profession. It is also suggested that the power of the authority issuing the aforesaid Circulars needs to be regulated as certain issues/confusions have arisen. There appears to be certain arguable stands taken in these Circulars like certain benefits are classified as taxable perquisites, but they are subjective and liable to litigation. E.g. in Circular No. 12/2022 dated 16.06.2022, Q. No. 4 refers to sales discount, cash discount and rebates and business conference as taxable perquisites, however, such matter is subjective and liable to litigation and may prove to be not a perquisite at all affecting ease of doing business.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		and Circular No.18/2022 dated 13.09.2022 giving the Guidelines for Removal of Difficulties under Section 194R(2) have created some confusion as well. These Circulars appear to go beyond the legislative intent stated in the Memorandum explaining the provisions of the Finance Bill, 2022. Some of the issues creating confusion on reading the above circular are listed below. The Tax Deductor need not consider whether the benefit or perquisite is taxable or not in the hands of the recipient under Section 28(iv), 41(1) etc. The provisions of section 194R will apply even if the recipient is not carrying or business or profession. Section 194R applies even if the benefit or perquisite is provided in kind. This is contrary to the decision of the Supreme Court in the Case of Mahindra and Mahindra Ltd 404ITR 1 (SC). Section 194R applies if the benefit or perquisite is in the form of a Capital Asset. This will imply that if a Capital Asset is sold by the Tax Deductor to any person at a price below fair market value, the TDS provision under section 194R will apply. It may so happen that the difference between the FMV and the actual consideration is less than 10% and the provisions of section 50C or 56(2)(x) are not applicable. Incentives given to a customer in cash or kind will be liable to TDS under Section 194R. The customer may not be carrying on business or profession and section 28(iv) is not applicable to him. Value of such incentive may be less than Rs. 50,000/- and Section 56(2)(x) may not be applicable to him. In other words, even if such incentive is not taxable in the hands of the customer, he will suffer TDS. In the CBDT Circular dated 13.09.2022, it is stated that Section 194R will not apply to issue of Bonus or Right Shares by a Company in which public have substantial interest as defined in Section 2(18) of the Income-	

Sr. No	Section	Issue/Justification	Suggestion
		tax Act. This implies that Bonus or Rights Shares issued by a Private or Public Company when public have no substantial interest will be subject to TDS under Section 194R. In CBDT Circular dated 16.06.22, it is stated that any benefit or perquisite given to a Government Entity, like Government Hospital, not carrying on business or profession is not liable to TDS under Section 194R. This implies that benefit or perquisite (e.g. Donation) given to any other Charitable Trust, Educational Institution, Hospital set up by a Company or an Individual will be subject to the TDS provision and the Donor will have to deduct tax at Source from the Donation amount although such Donation is exempt under Section 12. From the above, it will be noticed that wording of Section 194R and the above two CBDT Circulars have created some confusion. In some cases, the benefit or perquisite may not be taxable in the hands of the recipient and yet tax will be deducted at source. A question may arise whether in such cases, credit will be given to the recipient for tax deducted under section 194R or under Section 199. Section 194R applies only if the benefit or perquisite is taxable in the hands of the recipient. Section 194R applies only if the aggregate value of the benefits or perquisites exceed Rs.50,000/- in a financial year.	
154.	***Section 197 – Reduced rate of TDS for Joint Venture***	For larger projects, the Concerns are forming Joint Venture (JV). The entire projects and income/losses 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.	***It is suggested that for Joint Venture concerns, a reduced rate of TDS may be prescribed on a predefined method to avoid / delay in getting certificates under section 197.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
155.	***Section 197A - TDS on***	In non-availability of PAN cases, the	***It is suggested that provisions of***

Sr. No	Section	Issue/Justification	Suggestion
	non-availability of PAN Cases	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.	***section 197A may be extended to the persons covered under section 194C who have income below taxable limit and can give a proper declaration.*** ***Further, section 206AA may be amended to exclude quoting of PAN for those persons having income below taxable limit.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
156.	***Section 197A – Certain assessees may be allowed benefit***	Section 197A deals with provisions for non-deduction to be made in certain cases. Further, Rule 29C authorizes for furnishing of Form No. 15G/H in such specified cases so that no tax is deducted at source. However, currently in most cases only individuals and HUFs are able to claim the benefit of section 197A. There are certain other assessees who are made to file ITR forms to claim refund although in most cases either income is exempt or below the minimum threshold limit applicable to tax.	***It is suggested that section 197A may be suitably amended so that certain assessees like those registered under section 12A can also file Form No. 15G/H (via suitable amendment in rule 29C).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
157.	***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	***(i) It is suggested that MDR retained by bank from Merchant Aggregator and by Merchant Aggregator from Merchant Establishment may be exempted from TDS.*** ***(ii) The exemption u/s 197A(1F) may be extended to cases:*** - ***where the commission is retained by the bank while making payment to Merchant Aggregator (as the Income-tax department may consider Merchant Aggregator on a different footing with Merchant Establishment); and*** - ***where the commission is retained by the Merchant Aggregator while making***

Sr. No	Section	Issue/Justification	Suggestion
		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 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	***payment to Merchants*** ***The above suggestion will remove the deterrent for merchant aggregators as they will be in line with merchant establishment. This move will encourage online transactions by reducing the compliance burden as the merchant establishment will not have to deduct TDS before making the payment to the Merchant Aggregators.*** ***This will also make the whole process seamless and the merchants will not be wary to accept the new modes of payment due to the additional compliance of withholding tax. This will encourage the merchants to move from cash to digital money, which is key pillar of the Government of India initiative of Digital India.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		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 exemption is limited to cases where the commission is received by bank from the merchant establishment.	
158.	***Section 204 – Issue w.r.t. appeal filing by Principal Officer u/s 201/201A***	As per section 204, person responsible for paying TDS is Principal Officer or Drawing and Disbursing Officer and as per Section 201 and 201A, proceedings are initiated against Principal Officer. However, to appeal against the order u/s 201 and 201A, the signing authority is the person responsible to file return u/s 139 i.e., company Managing director or Director authorized in his absence. In case of default committed by Principal Officer of a branch of bank the appeal has to be filed by Managing director. It is not always possible for a branch official to get an appeal filed by Managing Director of the Bank. In order to avoid the litigation and sometimes default, if any, is discharged by them personally.	***It is suggested that in order to mitigate the aforesaid issue, a provision may be inserted to facilitate filing of appeal against orders passed under 201/201A by Principal officer as per Section 204.*** ***(SUGGESTION FOR REMOVAL OF ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
159.	***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 principato 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	***It is suggested to introduce a new section in the Income-tax Act, 1961 prescribing withholding tax rate of 1% on discount extended to the distributors of pre-paid service products.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		telecom 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.	
160.	***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 assessees 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 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.	***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.*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***
161.	***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	***(i) It is suggested that key terms referred in section 206C(1H) are defined to mitigate the risk of protracted litigation.***

Sr. No	Section	Issue/Justification	Suggestion
		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).	***(ii) It is suggested that securities whether listed or not may be made out of the purview of section 206C(1H).*** ***(SUGGESTION TO REDUCE / MINIMIZE LITIGATIONS)***

PART C – ADVANCE PAYMENT OF TAX

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
162	***Section 208 -Revision of Limit of advance tax***	The Finance Act (No. 2), 2009 raised the limit to pay advance tax under section 208 to Rs. 10,000. Considering the inflationary conditions prevailing in the country, it is felt that the said limit needs to be revised upwards so that the amount payable in one instalment of the advance tax exceeds at least Rs. 5,000. The present amount of Rs. 2,500 is too low. Infact, any assessee whose advance tax payable does not exceed Rs. 30,000 should be allowed to pay full amount in the last instalment. It is appreciable that the Finance Act, 2016 has provided for an exception to an eligible assessee in respect of an eligible business referred to in section 44AD to pay the whole of the advance tax in one go by 15th March of the financial year itself.	***The limit to pay advance tax under section 208 be raised appropriately. Infact,any assessee whose advance tax payable does not exceed Rs. 30,000 may be allowed to pay full amount in the last instalment.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

PART G-LEVY OF FEE IN CERTAIN CASES

DETAILED SUGGESTIONS

<table>
<tr><th>Sr. No</th><th>Section</th><th>Issue/Justification</th><th>Suggestion</th></tr>
<tr><td>163.</td><td>Section 234C – Interest due to MAT application</td><td>234C levies interest where advance tax instalments 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 instalments. 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 instalment itself. It would reduce the unnecessary demand determined against the assessee.</td><td>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.
(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)</td></tr>
<tr><td>164.</td><td>Section 234E – Day wise slab</td><td>According to the provisions of section 234E, where a person fails to deliver or cause to be delivered a statement within the time prescribed then he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues. But the amount of fee shall not exceed the amount of tax deductible or collectible, as the case may be.
Considering the hardships being faced by the taxpayers due to various reasons, penal fees for late filing of TDS returns need to be changed to period wise/ slab of days instead of current system.</td><td>It is suggested to follow day wise slab system & it may be taken as:
<table>
<tr><th>Period of Default</th><th>Max. Fees u/s 234E</th></tr>
<tr><td>Upto 15 Days</td><td>Rs. 500/- or tax amount, whichever is higher, but subject to maximum of Rs. 20,000/-.</td></tr>
<tr><td>From 15 Days to 1 Month</td><td>Rs. 1000/- or tax amount, whichever is higher, but subject to maximum of Rs.</td></tr>
</table></td></tr>
</table>

Sr. No	Section	Issue/Justification	Suggestion
			<table><tr><td></td><td>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)***
165.	***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.	***It is suggested that a unified rate of interest is to be prescribed both for delayed tax payments and refund cases.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
166.	***Section 245D – Existing applications may be disposed off under current provisions***	The Finance Act. 2021 has discontinued the Income-tax Settlement Commission (ITSC) and has provided for constitution of an Interim Board of settlement for pending cases and accordingly ITSC has ceased to operate on or after 01.02.2021. Further, it is also provided that where the option for withdrawal of application is not exercised by the assessee within the time allowed, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board. **Issue** It appears that existing pending applications already admitted under Section 245D(1) would be disposed by the Interim Board. Normally, it should be disposed off as per existing provisions of Chapter XIXA of the Act. The Applicants who have already filed Application under Section 245C of the Act should be covered within the existing provisions of the aforesaid Chapter. Otherwise, it may be violation	***It is suggested that pending and or existing applications under section 245C may be allowed to be disposed off under the existing provisions. Alternatively, applicability of new provisions may be made from say 1st April 2021 instead of 1st February 2021. Further, the provision to abolish Income Tax Settlement Commission may be reconsidered. Even if it is decided to be abolished, it may be done after disposal of all the cases pending with it and the scope of DRC may be widened by enhancing or deleting the limits of Rs. 50 Lakh & Rs. 10 Lakh as provided currently.*** ***It is also suggested that provisions pertaining to constitution of Interim Board and having CCITs only may be suitably modified so as to include independent members also.*** ***It is suggested that a suitable clarification may be issued w.r.t***

Sr. No	Section	Issue/Justification	Suggestion
		of Principles of Promissory Estoppel. Further, it is provided to abolish the Income Tax Settlement Commission with immediate effect. However, it may be considered that there are a lot of applications which are pending with it currently. Settlement of tax disputes has to be the part of taxation system and without any mechanism to resolve the tax disputes is going to make the life of assessees difficult. The setting up of Dispute Resolution Committee is a welcome step, but the beneficiaries may be limited in view of the ceiling of Rs. 50 Lakh and Rs. 10 Lakh provided therein. The provision to form Dispute Resolution Committee u/s 245M is currently applicable to small and medium taxpayers in whose cases the total Income as per Return is less than Rs. 50 lakhs. The Finance Act 2021 does not speak of any forum before which the large taxpayers can resolve their issues. The provisions regarding constitution of Interim Board provides that every Interim Board shall consist of three members, each being an officer of the rank of Chief Commissioner, as may be nominated by the Board. Composition of Interim Board with only CCITs may not be acceptable and may not achieve the objective and yield desired results. A separate retired member or present Members of the ITAT or any other equivalent officer who is not reporting to/under CBDT may be considered, to have an independent view. As per this provision, there appears to be ambiguity in the provisions relating to Dispute Resolution Committee and corresponding effect on other related provisions may be considered. At present, section 264 of the Act is clear that once order is in appeal then doors of revision are closed. A similar type of provision is needed to be embedded in section 245MA.	***availing benefit of parallel provisions regarding appeals to CIT(A) u/s 246A and to CIT u/s 264 of the Act. The order of DRC may be made appealable.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Chapter XX

APPEALS & REVISION

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
167	***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) to make an order passed by a Commissioner (Appeals) under section 271J also appealable to the Appellate Tribunal. This amendment is applicable from 1st April, 2018. **Issue:** The said amendment in section 253(1) allows an appeal to be filed before ITAT, if the order imposing penalty is passed by CIT(A). However, if the order is passed by Assessing Officer, the same would not be appealable either before CIT(A) u/s 246A or before ITAT u/s 253(1), thereby leading to denying principles of natural justice. This may be an unintended omission.	***It is suggested that necessary amendment may be made in section 246A to make an order passed by an Assessing Officer under section 271J appealable to the Commissioner (appeals) u/s 246A.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
168	***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. **Issue** 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 assessees which may affect carrying on of business. It would	***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%.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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 assessees 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 assessees 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 assessees.	
169	***Section 255 – Faceless proceedings in ITAT in a jurisdiction less manner – Few concerns to be addressed***	The Finance Act. 2021 amended section 255 of the Act so as to provide that the Central Government may notify a scheme for the purposes of disposal of appeal by the ITAT in a faceless manner. This is being amended as it will not only reduce cost of compliance for taxpayers, increase transparency in disposal of appeals but will also help in achieving even work distribution in different benches resulting in best utilisation of resources. **Issue** Faceless ITAT as Introduced may sometimes result in denial of justice. While the concept of Virtual hearing is appreciated but faceless hearing may result in non-granting of opportunity of hearing. It needs to be considered that the ITAT is the last fact-finding authority and already the below authorities of assessment and first appeal are faceless therefore faceless ITAT may not be required at this stage and may be made virtual but not faceless. ITAT may not be faceless. At the maximum, it can be made virtual and dynamic. Opportunity of being heard in	***It is suggested that the provisions to make faceless proceedings before the ITAT in a jurisdiction less manner may be reconsidered and may be implemented at a later date after having proper feedback w.r.t. other faceless schemes like assessment, appeals and penalty. Further, video conferencing may be duly incorporated in the said Scheme as and when enacted.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		person is the backbone of judiciary. ITAT is the final fact-finding authority and therefore at this stage, the faceless ITAT may harm in the matters on fact because the taxpayer would be left with no remedy but to suffer huge tax if he fails to convince ITAT based on written submission.	

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

DETAILED SUGGESTIONS

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

Sr. No	Section	Issue/Justification	Suggestion
			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. the adjustment made exceeds a minimum threshold or say 10% of taxable income, etc.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	c) Order to specify the specific clause of under -reported or misreported income for levy of penalty under section 270A	Section 270A has done away with the undue discretion in the hands of Assessing Officer by imposing penalty at the rate of either 50% or 200% depending on whether the income is under reported or misreported. Certain controls may be required in the	***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***

Sr. No	Section	Issue/Justification	Suggestion
		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 immunity from penalty and prosecution under section 270AA in case order specifies that he has not misreported the income.	***along with the mention of specific clause of section 270A(2)/(9) against each disallowance/addition. Such measures would act as a suitable control mechanism in the absence of recording of satisfaction to initiate penalty proceedings and would also enable assessee to opt for section 270AA providing for immunity from penalty and prosecution in case income is not misreported.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
	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	***It is suggested that section 270A may be suitably amended so that penalty is not automatically attracted for merely making of a claim which is not sustainable in law.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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%.	
172.	***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.	***It is suggested that suitable provision be inserted to solve the aforesaid anomaly.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
		(b) Also, there is no guarantee that appeal against quantum order with application for condonation of delay after rejection of application for immunity, will be admitted.	***Suitable provision may be inserted.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
173.	***Section 271AAB - Need to simplify penal provisions***	• Amended Section 271AAB(1)(a) provides for imposition of penalty @ 10% on undisclosed income found during the course of search and admitted at the stage of search subject to fulfilment of other specified conditions in section 271AAB(1A)(a) 60% penalty is to be imposed in other cases u/s 271AAB(1A)(b). • The above system of penalty is very complex to implement in reality. In search cases, penalty should ideally be the same irrespective of the time of admission/declaration by the culprit assessee. Assessing officers sometimes puts undue pressure on the assessees during search proceedings to extract the maximum amount of declaration. One of the reasons for the same is the pressure of target achievement by the assessing officers. • In such cases, quality of assessment suffers a lot and high-pitched assessments are made unnecessarily.	***It is suggested that the provisions of section 271AAB needs to be simplified. The time of admission may not be considered for imposition of penalty amount as once admitted all culprit assesses should be treated on the same footings.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
174.	***Section 271AAB - Penalty where search***	Section 271AAB(1) (till 15.12.2016) provides for imposition of penalty @ 10% on undisclosed income found	***Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and***

Sr. No	Section	Issue/Justification	Suggestion
	has been initiated	during the course of search and admitted at the stage of search. Undisclosed income not admitted at the stage of search but disclosed in the return of income filed after the search to attract penalty @ 20%. These are covered under clauses (a) and (b) of section 271AAB(1). 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).	***275 would apply in relation to penalty levied only under clause (b) of section 271AAB(1A), and not in respect of cases covered under clause (a).*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
175.	***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 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	***It is suggested that:*** ***(i) The section 271AAD(1)(i)/(ii) be suitably amended as below:*** ***"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 maintained by any person there is—*** ***(i) a false entry; or*** ***(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***

Sr. No	Section	Issue/Justification	Suggestion
		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 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 assessees 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	***a sum equal to the aggregate amount of such false or omitted entry."*** ***(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.*** ***(b) It is suggested that section 273B be amended so as to include within its scope, 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.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
176.	***Rationalization of Section 271D & 271E***	As per section 271D & 271E, if a person accepts/repays a loan or deposit or specified sum/advance, as	***It is suggested to restrict the levy of penalty to the maximum marginal rate of tax i.e. 30% or the***

Sr. No	Section	Issue/Justification	Suggestion
		the case may be in contravention with the provisions of section 269SS/269T, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit. The penal provisions of section 271D & 271E may be restricted to maximum marginal rate of tax i.e. 30% or the slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T.	***slab rate applicable to the assessee instead of 100% of the amount of loan or deposit taken or repaid in violation of provisions u/s 269SS & 269T.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
177.	***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 *DIT v Ravi Vijay [2012] 25 taxmann.com 176 (Raj.)*, the Rajasthan High Court has held that an appeal against order of penalty passed under section 271FA by Director, who holds rank of a Commissioner, is maintainable before Commissioner (Appeals) with reference to section	***It is suggested that an amendment be made in relevant sections (246A or 253) to clearly specify the authority to whom an appeal may lie against an order passed by DIT under section 271FA.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		246A(1)(q). Similar view is supported in *SRO, Meppayur-Kozhikode v DIT [2013] 37 taxmann.com 36 (Cochin - Trib.)* wherein it was held that where Director of Income-tax (Intelligence) levied penalty under section 271FA upon assessee, appeal against impugned order was not maintainable before Tribunal. Similarly, in *the District Co-operative Central Bank Ltd., R.R. Peta, Eluru, W.G. District v DIT ITA Nos. 576 to 578/VIZ/2018*, the Visakhapatnam Bench held that penalty order under section 271FA is an appealable order before CIT(A). However, Lucknow bench in *Raibareilly District Co-operative Bank Ltd. v DIT [2015] 54 taxmann.com 382 (Lucknow - Trib.)* held that appeal against an order of Director of Income-tax passed under section 271FA is to be filed before Tribunal who is higher in rank and not before Commissioner (Appeals) who is equivalent in rank with Director of Income-tax. The aforesaid view is also supported by the Hyderabad Bench in *the Nizamabad District Cooperative Central Bank Ltd, Nizamabad v DIT ITA Nos.1291 to 1296/Hyd/2017*, wherein it held that ITAT is not the forum to entertain the appeal against the penalty order under section 271FA. In order to reduce litigation with regard to this provision, clarification is sought on the aforesaid issue.	
178.	***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	***It is suggested that:*** ***i. Sub-section (3) may be amended to provide that penalty provisions under section 271H would not be attracted if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he has delivered or caused to be delivered the***

Sr. No	Section	Issue/Justification	Suggestion
		statements within a period of one year from the respective due dates i.e., namely, 31st July, 31st October, 31st January and 31st May, respectively for the quarters ending 30th June, 30th September, 31st December and 31st March. The TDS/TCS statements form the basis of preparation of annual tax statement in Form No 26AS. The deductee is required to confirm the exact tax deducted/collected at source and remitted to the Government by verifying Form No 26AS online, and thereafter pay the remaining taxes by way of self-assessment tax. However, if TDS/ TCS statements are permitted to be filed within one year of the due date prescribed for each quarter on account of non-levy of penalty, then the same would extend beyond the due date of filing return of income of that assessment year in respect of the second, third and fourth quarters. It may cause genuine hardship to the deductees as they would not be able to verify the TDS/TCS credited to their 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 referred to in section 200(3) or the proviso to section 206C(3) before the expiry of due date of filing of return of income of the previous year in which the tax was so deducted or collected, irrespective of the quarter to which the tax relates.*** ***ii. Penalty may be prescribed having regard to quantum of default and the period of delay, and no discretion may be given to the Assessing Officer in this regard. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

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

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

Sr. No	Section	Issue/Justification	Suggestion
		Act against the companies and their directors even after the appointment of Official Liquidator and passing of Winding up Order.	***LAWS)***
181.	***Section 276CC – Amendment w.r.t. clarification regarding inclusion of amount of advance tax paid and tax collected at source may be made applicable with retrospective effect***	The Finance (No. 2) Act, 2019 amended section 276CC so as to make the legislative intent clear and to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability. The aforesaid amendment is made applicable w.e.f. 01.04.2020. Since it is a clarificatory amendment as is clear from the Explanatory Memorandum, it should ideally be made applicable from a retrospective date so as to provide the benefit of clarification made to existing cases that are going on.	***It is suggested that the amendment in section 276CC made vide the Finance (no. 2) Act, 2019 w.r.t. calculation of tax payable to be determined after reducing tax collected at source and self-assessment tax be made applicable from a retrospective date being in the nature of clarification.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
182.	***Chapter XXII - Prosecution proceedings not to be imposed in case tax and interest paid***	In recent times, there is a spurt in prosecution proceedings under the Income-tax law. Prosecution proceedings are governed by Chapter XXII of the Income-tax Act, 1961. It causes some serious hardships to the concerned assessee. In case tax and due interest is paid, currently prosecution proceedings still take place against the assessee although revenue is in no loss.	***It is suggested that in case tax and due interest is paid by the assessee under Income-tax Act 1961, then prosecution proceedings may be dropped subject to certain exceptions as may be appropriately specified.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***
183.	***Initiation of prosecution***	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	***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.*** ***(SUGGESTIONS TO REDUCE / MINIMIZE LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		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 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
184.	***Incentive to tax payers – Investment of certain percentage of tax as annuity for the benefit of tax payers as old age support***	The Government recognises the contribution made by taxpayers in the development of the nation. It is a well acknowledged fact that tax payers help in building the nation and fund development activities carried on by the Government. Apart from the fact that Government issues certificates to taxpayers basis their contribution to exchequer, no other benefit is provided to the such tax payers. It is the need of the hour to encourage tax payers to contribute to the cause of the nation. In developed nations, there is a concept of social security being paid to citizens to help them tide over monetary issues during advanced age. A similar concept can be implemented in India for tax payers as well. E.g. a miniscule percentage (say 2 % to start with) of tax paid by each tax payer can be invested in the form of annuities in his/her name till the tax payer attains the age of 60. This would encourage all tax payers to start paying their taxes from an early age and that too they would feel that something directly is being given to them when they would not be able to earn any income and would act as social security support or a pension to be received when needed. The suggestion is only relevant for individual tax payers but would help in mobilising resources when the tax payer knows that Government values the tax payers contribution to the kitty and also gives back some money when the tax payer is not able to earn income and pay taxes. This would act as big sense of relief to the tax payers. Once the tax payer attains the age of sixty, he/she would start getting back the amount invested	***It is suggested that in order to encourage the taxpayers to start paying taxes at an early age, the Government may devise an annuity/investment scheme for each taxpayer contribution. To start with, 2/5% of tax paid by each taxpayer may be invested in the form of annuities till the time such taxpayer contributes taxes and say at the age of attaining 60 years, certain amount as available from that annuity may be paid to taxpayers.*** ***(SUGGESTION TO IMPROVE TAX COLLECTION)***

Sr. No.	Section	Issue/Justification	Suggestion
		in annuity by the Government. Such gesture of the Government would encourage all tax payers to start paying taxes honestly and this would also make tax payers have a sense of belonging. All tax payers including salaried should get such support from the Government. It is after all their own hard earned money being paid in the form of taxes for the development of the nation and they are able to derive direct benefit from the same when required most by them. It would be similar to the concept of corporate social responsibility as corporates give back something to the society from whom they earn profits. In this regard, consider an example of a taxpayer who is paying approximately Rs 50,000 pa as tax for say 35 years (age 25 years till 60 years). Here, Government can invest say 2 % of the tax paid i.e. Rs 1,000 pa for a period of 35 years and get a consolidated amount as per the conditions prevailing during the period. This amount can be paid to the tax payer concerned at the age of say 60 which would go a long way in encouraging tax payers to contribute to tax kitty knowing that such tax paid would also be directly useful to his well being in times of need.	
185.	***Grievance redressal mechanism – Fixing of responsibility and accountability***	Sometimes, it is very difficult to track the status of the grievances raised by the assessee on Income tax portal. Many a times, the issues raised by the assessee are shown to be resolved without providing any reasonable solution to the problem. Even robotic/fixed replies are given and assessees keeps on following up without getting a resolution to his grievance raised. Such hardship is being faced may be due to the fact that designated officers may not be allocated who will trace/track down the unresolved grievances. This would avoid partially the current scenario	***In order that the grievance redressal system is firmly in place and works as per the objective of its introduction, it is suggested to appoint at least one designated officer who works directly under the supervision of the Pr. Chief Commissioner of Income-tax in each jurisdiction dedicatedly who would be accountable/responsible for grievances being followed up by the assessees.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX***

Sr. No.	Section	Issue/Justification	Suggestion
		wherein grievances/tickets are closed so as to show that timely resolution provided to assessees whereas assessee is still dissatisfied with the reply from the ITD. It is pertinent to mention here that the DTC of ICAI has represented an issue requesting CBDT to address the concerns arising from automatic processing under section 143(1) of the Act by the CPC considering solely information provided in clause 16 of Form 3CD while ignoring income computation which is causing double addition of same income. The issue has been acknowledged as well by the CBDT. Taking such an issue as an example, there is a need to fix responsibility and accountability of a specific officer to whom assessees may take up such and similar issues.	***LAWS)***
186.	***Tax effect of appellate orders favourable to assessee***	It has been observed that the assessing officers do not grant tax effect of appellate orders within a reasonable time when they are favourable to assessees. It is likely that an assessee has to do follow ups and file reminders to get refunds processed.	***It is suggested that a specific provision may be inserted in the Act itself providing clear time limits to grant refund pursuant to an appeal effect order, thereby making assessing officers accountable to grant refunds within the prescribed time. Alternatively, set off may be allowed against advance tax, other tax payable by the assessee.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
187.	***Case for withdrawal of surcharge and cess***	The Article 270 and 271 of the Constitution of India The current provisions under the Income-tax Act, 1961 allows authorize Central Government to levy of surcharge and cess on the income tax component at the rates specified by annual Finance Acts. Over the years, there has been a steady rise in the rates of surcharge and cess (be it education and or health). Both surcharge and cess are a	***In view of aforesaid, it is suggested that Government may consider withdrawal of the levy of surcharge and cess altogether and abolish the same altogether, if possible or to avoid the complications,*** ***Further, rate of tax may be increased to compensate the withdrawal of surcharge and cess. However, in case levy of***

Sr. No.	Section	Issue/Justification	Suggestion
		direct cost to the taxpayer. Although the purpose and usage of levying surcharge and cess is provided by the successive Governments, it is time now to reconsider its levy in view of contemporary conditions. An end user individual taxpayer is paying both GST (on goods and services used by it) and Income-tax on income earned on it. Already, such taxpayers are contributing significant sum to the exchequer and hence burden is significant and it rises with levy of surcharges and cesses. It is the Government basic duty to provide health and education to its citizens and hence, it is quite unjust from taxpayers point of view to levy cesses and surcharge for the same when taxes both direct and indirect has been contributed by such persons. Also, at the time of introduction of surcharge and cess into the direct taxation provisions, it was clarified that such additional taxes are temporary in nature and would be done away in time. However, successive Governments are yet to do away with such additional taxes. In particular, the highest rate of surcharge levied at the rate of 37% on income exceeding Rs 5 crores is extremely high and there is a clear case at least to reconsider the same and reduce it as per the Government budgetary requirements. Tax buoyancy and collection figures as reported by CBDT and CBIC is pretty good and hence, the Government may consider doing away with surcharge and cess altogether. If not possible, at least, Government may consider reducing the rate of surcharge and cess especially the highest rate of surcharge of 37% being levied on income exceeding Rs 5 crores. Further, different rates of surcharge for different assessee makes the compliances more complicated for the taxpayers.	***surcharge and cess is continued, at least the rate of surcharge (especially highest rate of 37% on income exceeding Rs 5 crores) and cess may be reduced to provide some sort of relief to taxpayers community.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
188.	***Schedule 4/Rule 5 – Codify timeline for approval of application for Recognised Provident Fund within 6 months***	As per the Provident Fund Act, 1952; the establishment's employer and employee can create a provident fund scheme by forming a trust, and funds are invested as per rules prescribed under the specified provisions of the Income-tax Act, 1961. The application is approval of recognised provident fund is made to the Commissioner of Income-tax who is the prescribed authority to approve the Scheme so as to provide the status of the recognised provident fund. Till now, there is no timeline provided in the Income-tax Act, 1961 for providing such approval by the prescribed authority. So, it so happens that for years, approval of application for RPF is pending. Application keeps on lingering and assessee is unable to know the status of such application for approval whether the same has been accepted or rejected.	***It is suggested that the Income-tax Act, 1961 may be suitably amended so that timeline for approval/rejection of application of recognized provident fund be provided, say, within 6 months. It may also be provided that if no approval is received within the timeline specified, regarding acceptance or rejection of application, the same shall be deemed to be approved.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
189.	***Need to Simplify and Rationalise TDS Provisions - Flat rate @ 1% or 2% may be prescribed***	Provisions for application of TDS are basically anti avoidance measures. Apart from TDS on Salary under section 192 and TDS provisions for non-resident under Section 195 may continue as in existing forms as they are based on actual basis. TDS Rate should be unified, it will help in smooth conducting of business. Multiple rates are prescribed for TDS. The number of rates in the TDS framework could be reduced to one or two rates, so that compliance burden can be reduce. There are several rules and forms which a taxpayer needs to be aware of, for proper compliance. There are different rates ranging from 0.1% to 40% for different payments and for different set of taxpayers.	***It is suggested that that the Income-tax Act,1961 may be amended TDS should be charged flat at rate of 1%/2%. It is proposed to specify the same rate of TDS for payments to avoid hardships while conducting business*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
190.	***Addressing Confiscatory Provisions***	Some of sections in the Income-tax Act confiscates the right of the taxpayer to carry forward and set-off losses or claiming deduction/ exemption due to the delay of one or two days in complying the provisions	***It is suggested that delay of few days should not restrict the assessee benefit to claim deduction and exemption*** ***Further, it is suggested that***

Sr. No.	Section	Issue/Justification	Suggestion
		of the relevant sections. Also there are various penal provisions are indifferent to delay of a day, a month or year e.g. Section 139(3) restrict the assessee having loss under head "Profits and gains of business or profession" or under the head "Capital gains" to carry forward such lossess if the return of income not filed within the due dates specified u/s 139(1) which implies that a one day delay in filing the ROI will confiscates the right of the taxpayer. Similarly, 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. On similar line, in case of Charitable Institution ,one day delay will in filing registration application will leads to withdrawn of exemption. Further, if assessee fails to furnish tax Audit report u/s 44AB within the time prescribed by CBDT the amount of penalty is same irrespective of the period/number of days delay	***Penalties or fees should be charged based on period of delay, Such provisions should reduce entitlement at the rate of say, 2% to 5% per month of delay***
191.	***Uniform TDS Rates***	TDS is attracted to almost all transactions other than sale of goods. It has entered households – rent, immovable property transactions There is multiple TDS Rates ranging from 0.1% to 40% which leads to confusion among stakeholders. Monitoring the TDS Rates is a challenging task. Cost of compliance is enormous and tax in disguise Tax deduction varies depending on nature, If the TDS rate is fixed uniformly, it will reduce litigations on nature and in rate of TDS. reduce the refunds in case tds at higher rate ,	***It is suggested that that it may be considered for Uniform TDS Rates for resident payee i.e. it should be in two three slabs, therefore reducing confusion.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
		easy to comply by assesses. Further, Section 206C(1H) was introduced in year 2020, thereby including sale of goods under ambit of TCS subject to specific conditions. Subsequently Section 194Q was introduced in year 2021, where TDS is required to deducted in certain cases on purchase of goods. The provisions of Section 206C(1H) would not apply where the provisions of Section 194Q apply. This would lead to interplay between both the sections for business.	
192.	***Face for Faceless***	The introduction of faceless assessment was a landmark move by the Income Tax Department to honour the honest taxpayers. ICAI supports and appreciative faceless assessment regime. With the intent of "Minimum Government and Maximum Governance", this scheme bring transparency to the entire tax litigation system. Faceless assessment eliminates human intervention thereby placing substantial emphasis on written submissions. There are errors and mistakes in faceless assessments are not expeditiously addressed. Tickets raised are not addressed satisfactorily and Issues raised are closed without satisfactory response. Officers refuse to intervene under the reason that it is in the CPC domain. For months and years first appellate orders are not received and in some cases assessment orders have been issued within 2-3 days of issuance of show-cause notices thereby not giving enough opportunity and time of being heard to the assessee.	***It is suggested that that it may be considered that Specific officer in each Commissionerate may be designated to address and take forward such issues on a timely basis.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
193.	***One Nation One Tax***	Implements principle of One Nation – One Tax Under Present scenario, Tax on Agricultural Income is State Subject and on the other income, Central Government has right to levied income	***It is suggested that it may be considered to amend constitution to bring in One Nation – One Tax in the arena of Direct Taxes.*** ***All persons having Agricultural income exceeding say, Rs. 10***

Sr. No.	Section	Issue/Justification	Suggestion
		tax. Agricultural income is tax free in India. This benefit is reportedly being misused by wealthy farmers with large income to evade taxes. There is no justification for exempting Agricultural Income from tax. Already Central Government is offering substantial facilities to Agricultural sector. Provisions for set off of losses and allowances can take care of natural calamities, loss of crop, etc.	***lakhs should file income tax return.***
194.	***Unveil the Secrecy/ Open Budget***	Income Tax is an annual tax as compared to excise which is levied at predetermined rate applicable at the specified time. Finance bill gets enacted about a month ahead of the financial year eroding merit of secrecy and Stakeholders reactions/ suggestions on the proposal are missing. The Finance Act, 2021 has reworded the proposed provisions of section 45(4) and dropped the proposal of inserting the new sub-section (4A) of section 45 of the Income-tax Act but has rather introduced a similar but a deeming provision by way of a new section 9B to the Income-tax Act. Suggestions may be invited from the stakeholder's if the changes are made in the Finance Bill is presented and its enactment. However, there is no advantage of secrecy in the era of transparency and governance.	***It is suggested that process of Open Budget may be considered. Draft Proposals or broad provisions of Finance Bill may be released on say, 1st day of January, giving a time of 15 days for suggestions and the Finance Bill may be presented, considering feedback received and government philosophy, on 1st day of February***
195.	***Realignment of Due Date(s) under Income-tax Law with other Laws***	As per Section 139(1) of the Income-tax Act 1961 due date of filing of return of income is 31st July of the relevant assessment year for every previous year for non-audited assessee whereas due date of TDS return u/s 206 for the last quarter is 31st May of relevant AY. Further, the due date to issue form 16/16A is 15th June. Due to this actual time available to file return of Income	***It is suggested that the Due date to file Income Tax Return for Individuals may considered to be change from 31st July to 31st December.*** ***It is further suggested that other due dates may be aligned considering compliances in Company Law and GST Law.***

Sr. No.	Section	Issue/Justification	Suggestion
		is only one and half month in case where TDS is deducted. Also, the AIS and TIS data is available after 31st May as the due date of AIS is 31st May under section 285 of the Income-tax Act. However to avoid any mismatch of Income every taxpayer requires data of TDS as well as AIS and TIS while filing their ROI which is made available in 26AS/AIS/TIS only after 15th June of every assessment. Since in case of most of such taxpayers, the entire tax have already been deposited with the Government in advance, therefore the change of date of filing of ROI will not impact government revenue.	
196.	***No Retrospective Amendments***	Hon. Finance Minister Late Shri. Arun Jaitley ji in his maiden Budget Speech in 2014 declared that there would be no retrospective amendments. However, in recent years certain provision have been made applicable retrospectively, e.g. provisions relating to reconstitution of firms, disallowance for Cess. etc. These retrospective amendments lead to discontent in stakeholders and against the practices of good governance. Further retrospective amendments to tax laws bring down India's worldwide rating in 'Ease of Doing Business'	***It is suggested that government may consider that no retrospective amendments which are against the practices of good governance be made.*** ***(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
197.	***Introduction of provisions on innovative measures like 'Loss Carry Back' – Need of the hour***	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. It is the need of the hour to allow 2 year extension for Carry Forward of loss due to business closure for more than an year. The current tough times require innovative measures for the revival of	***It is suggested to permit carry back of losses and introduce suitable legislative amendments for its application. It is especially relevant for carry back of losses for hospitality, passenger transport and similar other sectors. In other words, after taking into consideration the benefits of this concept and applicability of this scheme in other countries, it is suggested that Government of India may***

Sr. No.	Section	Issue/Justification	Suggestion
		the economy. One such measure can be introduction of 'Loss Carry Back'. It is pertinent to note that during Global Financial Crisis, 2008 most countries like United States, United Kingdom, France etc. introduced the concept of Loss Carry back, and it was very effective. Loss carry back describes a situation in which a business experiences a net operating loss and chooses to apply that loss to a prior year's tax return. This results in a lower tax bill for the year to which this "carried back" loss has been applied because it reduces the tax liabilities for that previous year. The loss carry back can generate a tax refund for the business for that previous year because of this newly reduced tax liability. After the carried back loss is applied, it will be as though the business overpaid its taxes for that year. Typically, losses can only be carried back two years prior to the year in which the net operating loss occurred. Special circumstances allow for a three-year loss carry back. Loss carry backs are similar to loss carry forwards, except companies apply their net operating losses to preceding rather than subsequent years' incomes. Unless certain circumstances are present, a loss carry back can only be applied to the two years preceding the year the net operating loss occurred. Rationale (benefits) • Loss carry back would support business investment • Loss carry backs can lead to immediate refunds • Loss carry back is a form of loss refundability • Loss carry back acts as an automatic stabiliser It is pertinent to note that for FY 2019-20, lockdown happened for a period of one week. However, for FY 2020-21, it was for at least 1/4th of the year or	***also consider this innovative measure of 'loss carry back' in current times. This provision can provide a lifeline to distressed businesses.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
		25% of time was lost, as a minimum period. Businesses like aviation, travel & tourism, hospitality sectors etc. may post profits for last fiscal, but will find it difficult to meet ends for the current year. This will land industry in a situation that there is tax liability for FY 2019-20, difficult liquidity position and loss for the last two years. The Government advisory has directed payment of salaries and wages, when there was no income. This and other fixed costs and demand recession has seen F.Y. 2020-21 closure in loss. Therefore, concept of 'provision for Carry Backward of Loss' is worth considering at least for the last two FYs. In this regard, following formula may be considered: All fixed costs for the period from April, 2020 to (say) June, 2020 may be allowed as a special deduction for the F.Y. 2019-20. These expenses, if so claimed and allowed, shall not qualify for deduction for F. Y. 2020-21. In order to avoid litigation, listing of fixed costs like salaries and wages, rent, rates and taxes, insurance, office costs, etc. can be prepared and announced by the CBDT. Similar conditions prevailed in FY 2021-22 as well in the first quarter.	
198.	***Section 288 - Appearance by Authorized Representative***	This section empowers an AR to appear before the any income- tax authority or the Appellate tribunal in connection with any proceeding under this Act. Under clause (2)(vii), any other person who, immediately after commencement of this Act, was an income-tax practitioner within the meaning of clause (iv) of sub-section (2) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), and was actually practicing as such.	***It is suggested that as the clause (2)(vii) has become redundant looking at the age factor that the person may have obtained as on date and may be omitted.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
199.	***Request to consider amendment in***	We wish to bring to your kind attention the concerns of ICAI in respect of	***In view of the aforesaid, the definition of the term 'accountant'***

Sr. No.	Section	Issue/Justification	Suggestion
	Explanation to section 288(2) pertaining to definition of 'Accountant'	definition of 'Accountant' as provided in Explanation to section 288(2). The definition of 'Accountant' in Explanation to section 288(2) was last amended vide the Finance Act, 2015. The relevant extract of the amended Explanation to section 288(2) is as follows: *"Explanation.—In this section, "accountant" means a chartered accountant as defined in clause (b) of subsection (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—* ***(a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013** (18 of 2013); or* *(b) in any other case,— ……"* {Emphasis provided} The reason for amending the definition of an "accountant" as per the Explanatory Memorandum to the Finance Bill 2015 was to avoid conflict of interest and for better governance. Infact, this amendment was brought in for the limited purpose of disqualifying a relative from conducting the tax audit report based on a CAG report finding. In case of an assessee, being a company, the disqualification for being appointed as an 'accountant' for tax certification services applies to the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of section 141(3) of the	***as per Explanation to section 288(2) of the Income-tax Act, 1961 may be modified suitably to remove the applicability of section 141(3) of the Companies Act, 2013 so that:*** ***a. A CA providing tax certification services to a company of which he is not the statutory auditor has the same opportunity to provide the NAS to a company as a CA who is not providing tax certification services but is providing tax advisory services and other NAS to a company of which he is not a statutory auditor to avoid unreasonable compliance requirements.*** ***b. Requirements prescribed for non-company assessees should be made applicable to company assessees to ensure parity in applicability of the eligibility requirements for being an 'accountant'. Further, term "Relative" as used in sub-clause (iv) and (vii) of clause (b) Explanation to section 288(2) may be replaced with "Immediate Family" Members as is used in the IESBA Code of Ethics.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
		Companies Act, 2013. Relevant extract from section 141(3) is reproduced below: *"(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—* *……..* ***(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.*** *Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144."* {Emphasis provided} Considering the above, there is a possibility of two situations where a Chartered Accountant (hereinafter referred to as CA) in practice (individually or through a firm of CA) is called upon by a company to provide tax certification services as an "accountant". **A. Situation 1 – Where the CA is the statutory auditor of the company** From the governance perspective, as per section 144 of the Companies Act 2013, a statutory auditor shall provide to the company only such other services which are approved by the Board of Directors or the audit Committee. However, the statutory auditor cannot provide certain specified non-audit services (NAS) directly or indirectly to the company and entities related to it. It is pertinent to mention that the list of the prohibited services (NAS) by the statutory auditor of a company does not contain provision of taxation services including tax certification services. Therefore, there is no restriction on the statutory auditor to provide tax certification services	

Sr. No.	Section	Issue/Justification	Suggestion
		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	

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

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

Sr. No.	Section	Issue/Justification	Suggestion
		section 288(2) prescribes the eligibility requirements only for the assessee and not for any other related entities. Further, there is no prohibition from providing other NAS specified in section 144 of Companies Act 2013. By making eligibility criteria for company assessees with reference to section 141(3) of Companies Act 2013, the scope of restrictions has been broadened to extend to other related entities of the company as well as prohibition of NAS under section 144 of Companies Act 2013. A comparison of the restrictions as applicable to an accountant in the case of an assessee, being a company, and in the case of other assessees is quite clear from the bare perusal of explanation to section 288(2) of Income-tax Act 1961. The IESBA (International Ethics Standards Board for Accountants) Code of Ethics issued by IFAC (International Federation of Accountants) / the ICAI Code of Ethics distinguishes between audit services and non-audit assurance services. As there is no expression of opinion on the financial statements as a part of tax certification services, at best, such tax certification services would fall under "non-audit assurance services". In such situations, the personal independence prohibitions/restrictions are applicable to "assurance engagement team members". Further, NAS are subject to threats and safeguards, only if the NAS relates only to the subject matter of the assurance service i.e., tax certification. Given the nature of services, it would be prudent to apply "non-audit assurance" independence policies instead of "audit" independence policies.	
200.	***Computation of MAT profit in case of***	As per the extant provisions under section 115JB pertaining to	***The profits earned during the CIRP and the period during which the***

Sr. No.	Section	Issue/Justification	Suggestion
	companies undergoing Corporate Insolvency Resolution Process under the Insolvency Code, 2016	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.	***resolution plan is implemented should be excluded from 'Book profits' computed for MAT purposes.*** ***The amount of loan/liability waived and credited to profit and loss account should be reduced from the 'Book Profits' computed for the purpose of MAT.*** ***(SUGGESTION FOR REDUCING/ MINIMIZING LITIGATIONS)***
201.	***Conversion of convertible notes into shares***	Section 47(x) exempts conversion of bonds or debentures or debenture-stock or deposit certificate in any form, into shares or debenture of that company, from capital gains tax liability. However, the conversion of Convertible Notes (CNs) issued by an Indian start- up into shares or debentures is not specifically exempted.	***Indian start-ups were allowed to issue CNs to resident individuals. RBI has permitted a person resident outside India to purchase CNs issued by an Indian start-up company for INR 25 lakhs or more in a single tranche (Notification No. FEMA.377/2016-RB, dated 10th January, 2017)*** ***To bring CN at par with other instruments, it is suggested that a specific exemption should be provided for its conversion into equity.*** ***(SUGGESTION FOR REDUCING/ MINIMIZING LITIGATIONS)***
202.	***Section 43CA, 50C and 56 – Allowance of variation of 20% 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 2021 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 twenty percent of the sale consideration subject to conditions. The Finance Act 2021 provided that in cases where the stamp duty value of	**(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 20% is accordingly far too inadequate and may be increased to atleast 25%.*** **(ii)** ***Also, since the amendment is rationalisation measure it may be made applicable from the date the provisions were inserted.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
		immoveable property does not exceed 120% of consideration received/receivable on transfer of capital asset/stock in trade being land or building or both, consideration received/receivable shall be full value of consideration. Similarly, it provided that where the stamp duty value does not exceed 120% 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:** (i) In certain states, there is generally a significant/considerable difference between the stamp duty value/rate and the actual sale consideration and consequently in such cases gap between the two values is more than 20%. Hence, it is suggested to further increase the permissible variation. (ii) The delta of 20% of consideration is highly inadequate as stamp duty value is determined as per area and not as per property. The circle rate may vary due to several reasons. (iii) In the context of section 50C, Tribunals have adopted a view that where the difference between consideration and stamp duty value does not exceed 10%, provisions of section 50C are not applicable • Smt. Sita Bai Khetan vs. ITO (ITA No. 823/JP/2013) (delta of 10%) • John Fowler (India) Private Ltd v DCIT (ITA No. 7545/Mum/2014) (delta 10%) • Krishna Enterprises v ACIT [ITA No. 5402/Mum/2014) (delta 10%)	
203.	***Exemptions – Skill***	Section 11 and 12 – Exemption of Income of specified public charitable	***It is suggested to include institutions exclusively engaged in***

Sr. No.	Section	Issue/Justification	Suggestion
	Development	and religious trusts At present, Skill development Program activity is not included with in the ambit of Charitable activities. The existing ambit of the law should include Institution exclusively engaged in "Skill Development programmes" of all kind and in the Research Activities. Income of such programme should be exempted in full. This will encourage more of institutes to do Skill Development Program activity and Research activity due to exemption of section 11 and 12.	***"Skill Development programmes" under the ambit of section 11 exemptions.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
204.	***Tracking the un-spent portion of capital gain deposit – Levy TDS at the time of withdrawal***	At present, there is no mechanism provided in the Act/Rules for tracking the un-spent portion of capital gain deposit. Only when the assessees want to withdraw the money (otherwise than for house construction), some banks insist on tax clearance certificate, while other banks simply make payment of the balance amount. The assessees are also finding it difficult to obtain the tax clearance certificate.	***It is suggested that the relevant Rules/Act can be amended to provide that the un-spent amount can be released by the bank after deducting 20% thereof which can be remitted to the Government by way of TDS.*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
205.	***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	***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
		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 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.	
206.	***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 water-tight. 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	***It is suggested that the said definition may be relaxed to allow for:*** ***a) a smaller tenure of say 3 years;*** ***b) moratorium on the application of the 5 year rule for a period of 1 year;*** ***c) allow for a fraction of the year of say 240 days to be rounded off to the next higher year; and/or,*** ***d) allow for relaxation in the case of employee members who have reached the superannuation age of 60.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
		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.	
207.	***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 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.	***It is further suggested that the upfront premium may also be allowed as revenue expenditure as it is essentially a business expenditure only.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
208.	***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	***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)***

Sr. No.	Section	Issue/Justification	Suggestion
		may be subject to capital gains tax	
209.	***Taxation of ESOP in case of employees of eligible start-ups***	The amendment 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 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.	***ESOP tax deferral should be extended to all start-ups registered with DPIIT.*** ***Instead of said 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.*** ***If the provision is 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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
210.	***Rate of dividend taxation in hands of resident***	In view of the classical system of dividend taxation introduced vide Finance Act, 2020, resident individual investors in higher tax bracket will be	***The rate of dividend taxation in hands of resident investors may be kept at 20% (plus applicable surcharge & cess) i.e. at par with***

Sr. No.	Section	Issue/Justification	Suggestion
		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 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. The said aforesaid amendments were made as FIIs were making use of erstwhile dividend taxation regime. Also, there is a case now to bring back deduction under section 80L as was available earlier. Further, dividends shall include both received on equity shares as well as mutual fund dividend to provide clarity in taxation.	***tax rate applicable for non-residents and also earlier DDT rate. If possible, erstwhile dividend taxation regime may be reconsidered for resident individual taxpayers as also to reintroduce deduction under section 80L.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

DETAILED SUGGESTIONS

Sr. No	Section	Issue/Justification	Suggestion
211.	***Issues arising from applicability of Companies Act, 2013 - Amalgamation***	a) Section 72A of the Income-tax Act, which deals with treatment of unabsorbed losses and unabsorbed depreciation, in case of amalgamation, is restrictive in its application. Presently benefits of Section 72A are available only to company owning industrial undertaking or a ship or a hotel or banking company. Due to this restriction, other sectors namely service sector and real estate sectors are not eligible for benefits in the form of handing over of loss from one company to another.	***It is suggested that sectoral restrictions u/s 72A may be removed and provisions of this section be made applicable for all the sectors. (SUGGESTION FOR IMPROVING TAX COLLECTION)***
		b) Presently MAT credit u/s. 115JAA cannot be carried forward by the amalgamated company.	***The Income-tax Act needs to be amended so as to allow carry forward of MAT Credit in the hands of amalgamated company for remaining number of years.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

PART B — SUGGESTIONS FOR IMPROVING TAX ADMINISTRATION AND CITIZEN SERVICES

DETAILED SUGGESTIONS

Sr. No.	Section	Issue/Justification	Suggestion
212.	***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	***It is suggested that section 154 may be amended so that rectification applications u/s 154 in cases where Form No. 26AS reflects the entries relating to TDS but the same has not been claimed in the return of income be treated as errors/omissions.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***

Sr. No.	Section	Issue/Justification	Suggestion
		later date say after the time limit of filing a revised return has also expired. Considering the fact that such an omission in the return of income, duly supported by the entries of Form No. 26AS, is a mistake apparent from record, it is suggested that the Assessing Officers may be intimated to accept the rectification application under section 154 in such cases. This will surely be helpful in removing the administrative hindrances being faced by the assessees as well as the Government.	
213.	***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 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.	***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.*** ***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***

Sr. No.	Section	Issue/Justification	Suggestion
		(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 to the government.	***carried forward for claiming in the next year.*** ***(SUGGESTIONS FOR REMOVING ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES RELATING TO DIRECT TAXES)***
214.	***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	***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 No. 26AS of all deductees as an alternative Return system.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***

Sr. No.	Section	Issue/Justification	Suggestion
		separate challan which requires filling up the same PAN, TAN, name, address etc. details over and over again. This is clubbed with the internet connection problems, and it becomes a very cumbersome job especially for the small and medium assessees. Practically, for payment of tax so deducted details of parties with PAN and section under which it is to be deducted is maintained. However, except the section under which tax is required to be deducted, no other detail is required to be mentioned in the challan. The statement containing all such details is to be submitted for every quarter. This leads to duplication of work and also a cumbersome task of furnishing so many statements and challans.	
215.	***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 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	***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 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)***

Sr. No.	Section	Issue/Justification	Suggestion
		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.	
216.	***Tax consolidation Scheme***	***Background*** In India, separate entities are incorporated based on their specialization in various lines of businesses by the parent company. The group as a whole and the tax Department face many challenges. Some of them are:- • Each Entity is required to file a separate income tax return involving huge cost of compliance. • Each entity is assessed / scrutinised separately for intra-group transactions resulting in litigation cost for each entity. Significant administrative costs are incurred by the Income tax Department in keeping track of records and assessing multiple subsidiaries. • Apart from cost, a lot of efforts are required by both tax payer as well as Income tax Department for undertaking compliance. • Tax consolidation or combined reporting is a regime adopted in the tax or revenue legislation which treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes.	***It is suggested that government may consider introducing the concept of tax consolidation scheme considering the mutual benefits to both tax department and the assessees.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***

Sr. No.	Section	Issue/Justification	Suggestion
		Benefits – • Tax consolidation scheme would help to centralize the planning and payment of tax by the parent company. The company can set off the losses of one inter group company with the profits of another company. • Tax Consolidation will help in tax free movement of assets across the group which would aid in internal restructuring and optimum utilisation of resources. • The number of litigations pending with the tax department would also reduce and thereby reducing the administrative cost of the Income-tax Department. • The tax consolidation regime has been adopted in tax legislations of a number of foreign countries like Australia, France, Germany, Italy, Japan, Korea, Spain, USA etc. These countries have not only successfully implemented the said regime but also created a positive impact on business with significant reduction of compliance and litigation cost. • The tax consolidation regime also endorses the Government's efforts of "Ease of doing business in India" and assist in aligning the business and tax objectives of the industry.	
217.	***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. Amid severe financial / liquidity crunch, requiring the profit-making entity to pay tax will further increase the burden on the group.	***It is suggested that consolidation of losses at group level may be permitted by making suitable legislative amendments.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
218.	***Carry back of losses***	With an aim to provide impetus to businesses which are presently incurring losses, a new provision to	***It is suggested to permit carry back of losses and introduce suitable legislative amendments***

Sr. No.	Section	Issue/Justification	Suggestion
		carry back losses up to specified preceding period, subject to fulfilment of prescribed conditions, may be introduced.	***for its application.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
219.	***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.	***It is suggested that partnership firms having turnover up to certain limit can also be taxed on par with corporate. i.e. at 25% or 22%.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***
220.	***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	***It is suggested that TDS credit should be allowed purely on the basis of Form 26AS (irrespective of the fact whether the same has been claimed in the return or not) and the procedural requirement for issue or obtaining of TDS certificate in the Form 16A should be dispensed with. CBDT must ensure that this is implemented at ground level and AO grant TDS credit as per form 26AS and do not insist for production of Form 16A.*** ***Further, deductee be provided facility to download Form no. 16/16A himself instead of depending/waiting on deductor to issue the same.*** ***Also, generation of form no. 16/16A be made optional and not mandatory for the deductor. This will save huge amount of time and resources from deductor point of view.***

Sr. No.	Section	Issue/Justification	Suggestion
		deductees and forward the same to each deductee. In case deductor is a big organisation which has deducted TDS for thousands of parties, it is required to send the TDS certificate through mail or post separately to each deductee. Issuing TDS certificate to thousands of parties every quarter poses challenges and also consumes lot of time which can otherwise be used for operations of the deductor. This sometimes leads to incomplete compliance or non-compliance with provisions of issue of TDS certificates. Though there are penal provisions provided under the Act for non-issuance of TDS certificate by the deductor, in practice the AO do not enforce those provisions. Practical difficulties faced by the deductee It is the deductee who actually suffers by way of denial of TDS credit in absence of TDS certificate and therefore, it is a must for the deductee to continuously chase each deductor 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	***Currently, request is being placed by the deductor for downloading form no 16/16A which may be done away with and form 16/16A be available for download automatically without any request for the same.*** ***(SUGGESTIONS TO REMOVE ADMINISTRATIVE DIFFICULTIES)***

Sr. No.	Section	Issue/Justification	Suggestion
		at source in the return of income based on the details available in Form 26AS leading to inference that both the information furnished by deductor and information in the return of income are same i.e. as per Form 26AS. CBDT Circulars on issuing of TDS certificate The CBDT vide Circular No 3/2011 dated 13 May 2011 and Circular No 1/2012 dated 9 April 2012 has mandated for all deductors to issue Form 16A which is generated from TIN (Tax Information Network) website. • Further the CBDT in para 3 of Circular No 3/2011 specifically mentioned as under: "3. The Department has already enabled the online viewing of Form No. 26AS by deductees which contains TDS details of the deductee based on the TDS statement (e-TDS statement) filed electronically by the deductor. Ideally, there should not be any mismatch between the figures reported in TDS certificate 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	

Sr. No.	Section	Issue/Justification	Suggestion
		TDS certificate in Form No.16A and Form No. 26AS through a facility in the Tax Information Network website (TIN Website) which will enable a deductor to download TDS certificate in Form No.16A from the TIN Website based on the figures reported in e-TDS statement filed by him. As both Form No.16A and Form No.26AS will be generated on the basis of figures reported by the deductor in the e-TDS statement filed, the likelihood of mismatch between Form No.16A and Form No.26AS will be completely eliminated". • CBDT Instruction No. 4/2012 [F. No. 225/34/2011-ITA.II] dated 25 May 2012 states that "where the difference between the TDS claim and matching TDS amount reported in AS-26 data does not exceed Rs Five thousand, the TDS claim may be accepted without verification." CBDT Instruction 1 / 2012 dated 2 February 2012 and Instruction 2 / 2011 dated 9 February 2011 provides similarly. • CBDT Instruction No. 4/2014 [F. No. 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.	

Sr. No.	Section	Issue/Justification	Suggestion
		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.	
221.	***Reconciliation of each payment made by deductor to avoid duplication of work of TDS return***	In order to make the process of claim of TDS error free, a system was devised some years ago in 2009 and published vide Circular no 2/2009, dated 21.05.2009. The relevant excerpt from the said circular is as follows: *"12. With a view to enabling the implementation of the aforesaid decision, the TDS and TCS payment and information reporting system has been redesigned vide Notification No. 858(E), dated 25th March, 2009 published in Official Gazette. The salient features of the new TDS 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*	***The aforementioned circular is suggested to be implemented with appropriate modifications in light of the current technological advancements.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No.	Section	Issue/Justification	Suggestion
		Income-tax Rules, 1962 have been substituted to provide, inter alia, for the following: — *(a) All sums of tax deducted at source under Chapter XVII-B and of tax collected at source under Chapter XVII-BB shall, in general, be paid to the credit of the Central Government within one week from the end of the month in which the deduction, or collection, is made. Similarly, the same time-limit for payment will also apply for income-tax due under sub-section (1A) of section 192.* *(b) It is mandatory for all deductors (including Central Government and State Governments) to pay the amount by electronically remitting it into the RBI, SBI or any authorized bank.* *(c) It is mandatory for all deductors (including Central Government and State Governments) to make the payment by electronically furnishing an income-tax challan in Form No. 17.* *(iii) In the process of electronically furnishing the income-tax challan in Form No. 17, the deductor will be simultaneously required to furnish to the Taxpayer Information Network (TIN) system maintained by National Securities 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*	

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

Sr. No.	Section	Issue/Justification	Suggestion
		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

Sr. No	Section	Issue/Justification	Suggestion
222.	***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 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	***While Explanation 5 to Section 9(1)(i) of the Act provides that shares of a foreign company which derives directly or indirectly its substantial value from the assets located in India shall be deemed to be situated in India. Section 47(vicc) of the Act provides exemption only if the shares of foreign company derive substantial value from shares of an Indian company. While the intent may be to exempt all cases of demerger where foreign company derives substantial value from assets located in India, the reading of Section 47(vicc) of the Act indicates that the said exemption would be available only in cases***

Sr. No	Section	Issue/Justification	Suggestion
		transfer.	***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 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).*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
223.	***Section 9 - Income deemed to accrue or arise in India***	Section 9 of the Income Tax Act, 1961 ('the Act') provides for nexus rule, which if satisfied, deems income to accrue or arise in India and accordingly taxable in India under the domestic Law. The Finance Act, 2018 (as amended by the Finance Act, 2020) had introduced the concept of 'Significant Economic Presence' (SEP) under the Indian domestic tax law, pursuant to	***It is suggested that Section 9 may be amended to ensure that the provisions related to significant economic presence are limited to digital commerce rather than commerce involving physical goods with traditional system of contract entering etc. Secondly, till the rule relating to attribution of income component to the SEP are in place there should not be any obligation to deduct tax only***

Sr. No	Section	Issue/Justification	Suggestion
		which a non-resident having SEP in India would be considered to have a 'Business Connection' (taxable presence) in India. The threshold for SEP has been notified by insertion of Rule 11UD to the Income-tax Rules, 1962 ('the Rules'). Explanation 2A and Explanation 3A to section 9(1)(i) of the Act read with Rule 11UD of the Rules provides that– Significant economic presence of a non-resident in India shall constitute "Business Connection" in India if - a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds Rs 2 crores; or b) Systematic and continuous soliciting of business activities or engaging in interaction exceeds 3 lakhs users in India. The above transactions or activities shall constitute SEP, whether or not the agreement for such transactions or activities is entered in India or the non-resident has a residence or place of business in India or the non-resident renders services in India: Given the above, if the SEP of the non-resident is constituted in India, the income attributable to the transactions or activities as indicated above (i.e. purchase of goods, download of data etc.) would be deemed to be income accruing and arising in India and will be liable to tax in India.	***if such deduction obligation arises from this new nexus rule.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
224.	***Cross-border merger***	**Exemption from Capital gains** A transaction of amalgamation, where the amalgamated company is an Indian company, is exempt from capital gains tax liability. Further, in case of an inbound merger,	***The merger of an Indian company with a foreign company in a specified jurisdiction is now permitted as per section 234 of the Companies Act, 2013 r.w. Rule 25A of the Companies Merger***

Sr. No	Section	Issue/Justification	Suggestion
		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).	***Rules.*** ***The FEMA Merger Rules have also been amended to permit an outbound merger, subject to conditions. One such condition is that a foreign company can acquire and hold only certain assets in India which are permitted under the relevant FEMA regulations for the acquisition of property in India.*** ***Such cross-border mergers would not be attractive till the time there exists tax liability or ambiguity around taxability for such transactions. The income tax provisions, therefore, need to be aligned with corporate law and FEMA to achieve the objective of increasing the ease of winding up operations in India.*** ***The following tax treatment is recommended for consideration:*** ***I. Removal of a condition specified in section 47(vi):*** • ***The condition that the amalgamated entity should be an Indian company for claiming exemption from capital gains tax arising on transfer of the undertaking should be removed.*** ***No taxability for the shareholders of the amalgamating company.*** • ***The shareholders receiving shares of the foreign amalgamated company should not be subject to capital gains.*** ***II. 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***

Sr. No	Section	Issue/Justification	Suggestion
			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 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)***
225.	***Section 92C(2) and Rule 10 CA - Range concept***	Arm's length range is the 35th to 65th percentile of the dataset. Globally, arm's length range is the Inter quartile range (25th to 75th percentile of the dataset). This is practiced in most of the countries, for eg. US, Canada, UK, etc.	• ***The arm's length range in India be aligned with the globally accepted inter quartile range of 25th to 75th percentile of the dataset.*** • ***It will reduce the compliance cost for the Assessee as a benchmarking from one country perspective can be applied from the other country perspective as well.*** ***(SUGGESTION FOR RATIONALIZATION OF THE***

Sr. No	Section	Issue/Justification	Suggestion
			PROVISIONS OF DIRECT TAX LAWS)
226.	***Tolerance Band – Second proviso to section 92C(2)***	Applicability of section 92CE has to be restricted only to cases satisfying the base erosion test. The provisions, as presently worded, may give rise to an interpretation that even where the primary adjustment is made in the hands of non-resident, secondary adjustment follows. As a consequence, it may be interpreted as allowing repatriation of funds outside India, which may not be permitted even in terms of FEMA/ RBI regulations.	***In order to remove this anomaly it is recommended that section 92CE(2) be amended to clarify that the section applies only in case where the primary adjustment is made in the hands of the Indian AE and PE of foreign entity*** ***(SUGGESTION FOR IMPROVING TAX COLLECTION)***
	(ii)	Section 92CE deems the difference between the transaction price and arm's length price as an advance (which is to be recorded in the books) and provides for imputation of interest on such advances. However, there is no specific provision to reverse the advances appearing in the books even in case where the AE relationship ceases to exist or in case where the excess money is repatriated.	***It may be specifically provided that the advances appearing in the books of the parties be reversed in following cases where AE relationship ceases to exist, or excess money is repatriated.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***
227.	***Section 92C- Computation of arm's length price***	Section 92C provides for the manner of computation of arm's length price (ALP) in respect of an international transaction. *Range concept* The Finance (No2) Act 2014 introduced range concept for determination of ALP subject to satisfaction of certain conditions. While this amendment was a welcome change which sought to align the Indian TP regime in line with the global practice, the arithmetic mean concept (unique to India) continues to apply in certain circumstances. The Arm's length range prescribed under Rule 10 CA 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 practised in most of	***The provisions of section 92C(2) be amended to provide that the arm's length range shall be inter quartile range of 25th to 75th percentile of the dataset.*** ***(SUGGESTION FOR REDUCING/MINIMIZING LITIGATIONS)***

Sr. No	Section	Issue/Justification	Suggestion
		the countries, for eg. US, Canada, UK, etc. With sufficient maturity in Indian TP regime and increased robustness and availability of data it is time that the arm's length range in India should be aligned with the globally accepted inter quartile range of 25th to 75th percentile of the dataset.	
228.	***Section 92CE - Secondary Adjustments***	Section 2(24) provides for an inclusive definition of the term 'income'. Further, section 92CE provides for computation of interest income in pursuance of secondary adjustment, which is considered as deemed income. Non-reference of such income in income definition may lead to non-taxation of such income	**It is suggested that income definition under section 2(24) be amended to include interest income pursuant to secondary adjustments under section 92CE**
	(ii)	As per section 92CE, as a consequence of a primary adjustment made to align the transfer price to the arm length price, certain secondary adjustments are required to be carried out for the purpose of correct allocation of cost and profit to the associated enterprises. However, such adjustments are made only when the value of primary adjustment exceeds Rs. One crore. Furthermore, as per the FEMA Act, 1999 which provides for a liberalized remittance scheme (LRS) the amount of remittance that could be made to a resident individual abroad is upto $ 250000. In view of the above stated provisions in order to bring the laws on same lines it is therefore important that the threshold limit for subjecting the transaction to secondary adjustment should be increased.	**It is suggested that the threshold limit for subjecting the transaction to the secondary adjustment should be increased from 1 crore to 2 crore so that it is in parity with the laws of FEMA which also deals with foreign funds.**
229.	***Section 92D***	As per section 92E, every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and	***It is suggested that a sub-section should be inserted in section 92D to provide that the provisions of section 92D relating to maintenance of information and documents shall not apply to an enterprise (e.g., a foreign company) which has entered into***

Sr. No	Section	Issue/Justification	Suggestion
		verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed. As per Rule 10E the said report is to be furnished in Form No. 3CEB. The Finance (No.2) Bill, 2019 substituted the then section 92D regarding and provided for maintenance, keeping and furnishing of information and document by certain persons. The foreign enterprise entering into international transactions and having income earned from India but not chargeable to tax in India is not required to maintain information and documents (Local TP documentation) under section 92D. However, furnishing of Form No. 3CEB to report the international transactions is still required by such foreign enterprises.	***an international transaction with another enterprise and the income earned by the first-mentioned enterprise from India is not taxable income in India.***
230.	***Section 92E- Transfer Pricing Report***	Section 92E provides that a report from an accountant has to be furnished by persons who are entering into an international transaction or a specified domestic transaction. A report from an accountant in a prescribed form, duly signed and verified by the accountant must be obtained before the specified date by any person entering into an international transaction or specified domestic transaction in the previous year. The audit is applicable to both international and specified domestic transactions. Form 3CEB must be filed. Section 115A of the Act has been amended by the Finance Act 2020 and it has been provided that a non-resident (not being a foreign company) and a foreign company are not required to file return of income subject to fulfilment of conditions stipulated in Section 115A(5). Since the assessee has been exempted from filing return of income, the natural consequence is that there	***Section 92E may be amended to clarify that in case of assesses who are exempted from furnishing return of income there is no requirement of furnishing the report under section 92E.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		should not be any obligation to furnish Form 3CEB. However, in absence of any clarification or amendment to the provisions of section 922E, there is uncertainty in this regard. The matter assumes importance due to the severe penal consequences which may be imposed by the Assessing officer for non-filing of report by the company even though it is exempted from furnishing return. It is therefore, important that the section 92E may be amended to clarify that in case of assesses who are exempted from furnishing return of income there is no requirement of furnishing the report under section 92E.	
231.	***Section 94A - Special measures in respect of transactions with persons located in notified jurisdictional area***	One of the tax consequences of a country or area being notified as NJA is that payments to persons located in that NJA would be subject to a higher withholding @ 30%. The relevant provision which provides for this implication i.e., section 94A(5), would be applicable notwithstanding anything to the contrary contained in the Act. Section 206AA which provides for higher withholding @ 20% in absence of PAN of payee is also applicable not withstanding anything to the contrary contained in the Act. Though the intent appears to be that section 94A would override section 206AA, there may be some difficulties in interpretation.	***Section 94A and/or section 206AA may be suitably amended to clarify that section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
232.	***Section 94B - Limitation of interest benefit provisions - certain concerns to be addressed***	Section 94B deals with limitation on interest deduction in certain cases. The relevant extract of the same is reproduced below: "94B. *(1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in*	**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
		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): ***Provided** that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.* *(2) For the purposes of sub-section (1), **the excess interest shall mean an amount of 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.**"**(emphasis supplied)**.* ***I. Issue*** Whether for purpose of determining amount of excess interest under section 94B(2), interest paid to third party lenders (i.e. other than associated enterprises) should be included in 'total interest paid or payable' or it should only include interest paid or payable to associated enterprises? **Rationale:** • Sub-section (2) to section 94B refers to "*an amount of total interest paid or payable*". The literal reading of the section does not create any limitation on inclusion of interest paid or	

Sr. No	Section	Issue/Justification	Suggestion
		payable to associated enterprises only. The words referred to are 'total interest paid or payable'. • The legislature in its wisdom has separately referred to "*an amount of total interest paid or payable*" and "*interest paid or payable to associated enterprises*" within the same sub-section itself. Thus, basis the literal reading of the section, interest 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]	
	(ii)	As per FDI Policy, 100% FDI towards infrastructure falls under automatic route. Foreign investors 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.	***It is suggested that borrowings by Indian companies backed by corporate guarantee shall be fully excluded in this clause.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		Disallowance / limitation of allowance of interest expense on instances where such borrowing is secured by guarantee by AE will adversely affect the viability of infrastructure projects.	
233.	***Section 95 - General Anti-Avoidance Rule***	**a) Meaning of the terms 'Substantial' and 'Significant' in Section 97(1) of the Act** The Finance Act, 2015 deferred implementation of General Anti Avoidance Rules (GAAR) by two years so as to introduce provisions of GAAR with effect from Financial Year (FY) 2017-18. The Finance Act, 2016 provides for the effective date as 1 April 2017. Section 97(1) of the Act provides that an arrangement shall be deemed to be lacking 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.	***It needs to be clarified what shall constitute as "substantial commercial purpose' and "significant effect' for the purpose of section 97 of the Act.*** • ***Substantial commercial purpose may be explained with reference to the terms used viz. location of an asset/transaction or place of residence of a party (for e.g. whether it would be specified value of assets located; value of a transaction as comparable to the total assets of the business or any other such related parameter).*** • ***Similarly, what will constitute as 'significant effect' vis-a-vis business risks / net cash flows needs to be clarified.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
		b) Clarification on the term 'tax benefit' as defined under section 102(10) of the Act The term 'tax benefit' as defined under section 102(10) of the Act includes, — *"(a) a reduction or avoidance or* ***deferral of tax*** *or other amount payable under this Act; or* *(b) an increase in a refund of tax or other amount under this Act; or* *(c) a reduction or avoidance or*	***Clause (e) and (f) should be appropriately worded to correspond with the 'tax' amount. In other words, the reference to income/loss should not be the base for defining the term 'tax benefit'.*** ***In line with the Expert Committee recommendations, it is suggested that:*** ***a) the tax benefit should be computed in the year of***

Sr. No	Section	Issue/Justification	Suggestion
		deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or (d) *an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or* (e) ***a reduction in total income; or*** (f) ***an increase in loss,*** *in the relevant previous year or any other previous year;"* ***(Emphasis supplied)*** Clause (e) and (f) in the definition refer to "reduction of total income" and "increase in loss" as tax benefit. An ambiguity arises as to how tax benefit is conditioned at income / loss level. This may also defeat the objective of INR 3 crore tax benefit threshold as provided in Rule 10U of the Income-tax Rules, 1962 (the Rules). Computation of tax benefit on deferral of tax (which is merely a timing difference) needs to be clarified. As observed by the Expert Committee recommendations[1], in cases of tax deferral, the only benefit to the taxpayer is not paying taxes in one year but paying it in a later year. Overall there may not be any tax benefit but the benefit is in terms of the present value of money. Further, as observed by the Expert Committee[2], the term tax benefit has been defined to include tax or other amount payable under this Act or reduction in income or increase in loss. The other amount could cover interest.	***deferral and the present value of money should be ascertained based on the rate of interest charged under the Act for shortfall of tax payment under section 234B of the Act.*** ***b) for the sake of clarity, it may be specified that tax benefit for the purposes of the threshold shall include only income tax, dividend distribution tax and profit distribution tax, and shall not include other amounts like interest, etc.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
234.	***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.**	***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 to two lakh fifty thousand rupees or***

[1]Page 48 and 49 of the Final Report by the Expert Committee on GAAR chaired by Dr. Parthasarathi Shome.
[2]Page 47 of the Final Report by the Expert Committee on GAARchaired by Dr. Parthasarathi Shome.

Sr. No	Section	Issue/Justification	Suggestion
		2,50,000 or more in a financial year (FY) shall be required to apply for PAN by the end of the FY in which it enters into such transaction. Further, the term **'Financial transaction'** is not defined. • 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. PAN is required to be furnished in Form 10F in cases where TRC does not contain requisite information to claim the benefits of DTAA. Thus, they are required to obtain PAN. This creates unnecessary hassle to the foreign entities and not be in in line with of 'ease of doing business.	***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.*** **It is recommended to withdraw the requirement for obtaining PAN in case of foreign entities entering into financial transaction for a value of Rs. 250000 or more.** **Alternatively, the person making specified payments should file information regarding non-resident through its PAN so that benefit of DTAA can be availed by the non-resident without applying for PAN in their own name.** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
235.	***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	***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
		payable by the specified company **TO THE EXTENT TO WHICH SUCHINTEREST DOES NOT EXCEED** the amount of interest calculated at the rate approved by the Central Government in this regard, having regard to the terms of the loan or the bond and its repayment. It is imperative to note that usage of the term "To the extent to which such interest does not exceed" may be interpreted to mean that in case the borrowings are made at a rate higher than the rate approved by the Central Government, the interest income on the difference will be chargeable to tax at the rate of 20%. As per the 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.	
236.	***Section 195 –*** ***a) Time limit for Issuance of "general or special order***	Section 195(2) provides where a payer considers that whole of the sum being paid to a non-resident is not chargeable to tax, he may make an application to the Assessing Officer to determine by general or special order, the appropriate portion of the sum so chargeable. It may be noted that no time limit of passing such order has been prescribed in the Act, which causes undue hardship in genuine cases.	***It is suggested that an appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer.*** ***Further, where an application is rejected, the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.*** **(SUGGESTIONS FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)**
	b) TDS on payments made through credit cards	Credit card companies charge their customers with a foreign transaction fee/ currency conversion fees whenever a transaction is made with a foreign currency or perhaps, passes via any foreign bank. To process a foreign transaction, the card issuer charges a percentage of the total transaction amount, which is usually 3% or more. Resident individuals often use their	***It is suggested that the credit card company may withhold tax on the payment made to the foreign entity at a marginal rate so that these types of transactions can be captured and revenue may be increased.*** ***(Suggestion for increasing the tax base)***

Sr. No	Section	Issue/Justification	Suggestion
		credit cards to pay to foreign entities for various goods / services in foreign currency. These transactions are reported to RBI but are in no case captured by ITD. There is a need of creating a mechanism so that these types of transactions can be captured by the Income Tax Department so as to appropriately tax them.	
	c) 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 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.	***(i) Section 204 may be amended as follows -*** ***For the purposes of the foregoing provisions of this Chapter*** ~~*and section 285,*~~ ***the expression "person responsible for paying" means –*** ***'(iii) in the case of credit, or, as the case may be, payment of any other sum chargeable under the provisions of this Act, or in the case of furnishing of information relating to payment of any sum to a non-resident (not being a company), or to a foreign company, whether or not such sum is chargeable under the provisions of the Act, the payer himself or if the payer is a company, the company itself including the principal officer thereof.*** ***(ii) The penalty may be reduced, in case non-furnishing of information relates to a transaction not chargeable to tax.*** ***(iii) The meaning of "person responsible for collecting" may be incorporated in the Act.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
	d) 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. The press release issued by the CBDT on 17 December 2015 states	***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.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***

Sr. No	Section	Issue/Justification	Suggestion
		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.	
	e) TDS on sale of Residential Property by Non-Residents	When a Non-resident sells residential property to a resident, tax has to be withheld by the resident purchaser of immovable property at the rate of 20 percent plus applicable surcharge and cess in case of long-term capital asset and 30 percent plus applicable surcharge and cess in case of short-term capital asset. There may be a situation for the non-resident seller that the tax incidence on capital gain is lower or nil. In case non-resident seller estimates a lower tax liability or nil tax liability, he/she may approach to his/her jurisdictional Assessing officer by filing Form 13 under section 197 of the Income Tax Act, 1961. The purchaser will have to obtain a tax deduction and collection Account Number (TAN) in case the seller is an NRI, it takes at least 7 to 10 working days to have it activated. It may take at least 30 days to put up the Form 13 to the approving authority. Practically, the procedure takes not less than 45 days to have the Lower Deduction Certificate. It creates a practical difficulty for both buyer and seller. Further, if the buyer is not into business and he is not required to deduct tax generally, then after this transaction he has to surrender this TAN after.	***It is suggested that a certificate from a Chartered Accountant giving calculation of profits/loss on sale of capital property to be filed online should be considered as a sufficient compliance for deducting lower tax rate or nil tax rate.***

Sr. No	Section	Issue/Justification	Suggestion
		In addition to the above-mentioned points, the NR has to create login for making application for lower deduction certificate. The login can be created after validation and the validation can be done through: *Details of TDS/TCS Deposited.* – This is generally not available with the deductee because earlier he was not required to deposit tax. *Challan Details of Tax Deposited by Taxpayer* - This is also generally not available with the deductee. *Mention Details of 26QB statement details filed by Buyer before correction*– This is also generally not available with the deductee. This is required for compliance u/s 194IA, this is applicable when the seller is resident. *Authentication through Aadhaar / VID*- The NR is not required to have a Aadhar number. This causes a lot of hardship for the deductee to register himself with the TRACES portal to make application for lower deduction certificate.	
237.	***Section 201 – Limitation period for Non-resident***	Invocation of section 201 in case of a payer to a non-resident for not withholding appropriate tax and depositing the same in the Indian treasury There is no limitation period for invocation of this provision. This creates need for increasingly impractical period of indemnity being sought by a payer from the recipient. Where the payer is conducting very few or one-off transactions involving India, this creates inordinate uncertain Indian tax exposure for such payer.	***Limitation period should be provided as follows:*** ***(I) 4 years from the end of the financial year in which the transaction requiring tax to be withheld, took place;*** ***(II) Absolving the payer from this obligation if the payee non-resident files tax return in India and hence is now approachable by the tax department to be pursued for tax recovery, if any.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
238.	***Chapter VIII of the Finance Act, 2016 - Equalisation Levy - Issues to be***	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	***In view of the issues detailed, it is suggested that suitable amendments may be carried out in the Chapter VIII of the Finance***

Sr. No	Section	Issue/Justification	Suggestion
	addressed	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 ambit of the Income-tax Act, 1961. It is recommended that the provision be withdrawn or be enacted under Act.	***Act, 2016.*** ***(SUGGESTION FOR RATIONALIZATION OF THE PROVISIONS OF DIRECT TAX LAWS)***
239.	***Definition of "assessee"***	The definition of assessee under section 2(2) of the **Black Money Act** reads as follows: "A person, —	***It may be clarified that reference to "resident in India" in both places in clause (a) and clause (b) of section 2(2) refers to resident and ordinarily resident, in case of***

Sr. No	Section	Issue/Justification	Suggestion
		(a) being a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the previous year; or (b) being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year, who was resident in India either in the previous year to which the income referred to in section 4 relates; or in the previous year in which the undisclosed asset located outside India was acquired" As per section 6 of the Income-tax Act, 1961, resident includes both resident and ordinarily resident (ROR); and resident but not ordinarily resident (RNOR). Accordingly, in the above definition of "assessee" under Black Money Law, resident under section 6 referred to in clause (a) would cover both ROR and RNOR. However, since RNOR has been specifically included along with non-resident in clause (b), reference to resident under section 6 in clause (a) implies only ROR and not RNOR. (1) In case of an individual who is RNOR in the relevant previous year, whether the additional requirement in clause (b) of being resident in the earlier previous year when the undisclosed asset was acquired has to be satisfied. (2) If an individual is RNOR or non-resident in the relevant previous year, whether the requirement in clause (b) of being resident in the Previous year in which undisclosed asset outside India was acquired implies that, in such earlier previous year, the person has to be only ROR and not RNOR.	***an individual and HUF.***
240.	***Enhancing scope of Taxation of digital income***	• Many digital companies based outside India like google, facebook, twitter etc. collect and provide information/services to various users. Thereafter, on	**These companies earn from advertisement and other services outside India to various subscribers/users based in India. Therefore, it is suggested that**

Sr. No	Section	Issue/Justification	Suggestion
		getting popular they start charging for information and advertisements about products of third parties. In this process, the first mentioned foreign company collects information about the users in India. This data base is monetised and made available for use by companies in India as well as outside India. • Equalisation Levy covers the first two scenarios, namely providing advertisements and platform for selling goods/services initiated in India but not the third one which is providing data base. • Further, it is also not covered under Significant Economic Presence (SEP) under section 9 of the Income- tax Act, 1961.	**suitable tax should be charged on these foreign entities on the basis of some criteria like number of Indian users / hours browsed by Indian users, as income deemed to accrue or arise in India.** **Further when Pillar I is discussed in the OECD the above-mentioned income may be included for computing Amount A under Pillar I**
241.	***Section 142(2A):*** ***Cases where higher price is determined by custom department for imposing duty should be considered for special audit***	In respect of import of goods there have always been instances of over valuation or under valuation of goods for the purpose to evade taxes and therefore for this purpose price determination is done by the Customs Department on which custom duty is duly paid. However, despite the payment of customs being made on a higher price, the price recorded in the books of accounts remain the same i.e. either overpriced or underpriced. Since the levy of income tax is on the basis transactions recorded in the books of account, there is a possibility of other manipulations in the books of account	**It is suggested that the cases where transaction price has been determined by the Customs Department other than the declared price (ie price recorded in books of account), should be considered for the purpose of special audit under section 142(2A) of the Income-tax Act.**

ABOUT DIRECT TAXES COMMITTEE AND COMMITTEE ON INTERNATIONAL TAXATION OF ICAI

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

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

Direct Taxes Committee and Committee on International Taxation
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
ICAI Bhawan, A-29, Sector-62, Noida-201309 (U.P.)
Email: dtc@icai.in and citax@icai.in Website: www.icai.org